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5, 2926

No. 14656

United States
Court of Appeals
for the Ninth Circuit

See nos. 2927-2928

HANS FORSTER,

Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

Transcript of Record

(In Six Volumes)

VOLUME I.

(Pages 1 to 470, inclusive)

Appeal from the United States District Court for the Western
District of Washington, Northern Division

FILED

DEC -2 1955

PAUL P. O'BRIEN, CLERK

No. 14656

United States
Court of Appeals
for the Ninth Circuit

HANS FORSTER,

Appellant,

vs.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Seattle, Washington,
Attorneys for Appellee.

In the United States District Court, Western District of Washington, Southern Division

No. 48929

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HANS FORSTER, L. HICKS TAYLOR and
HAROLD ERICKSON, Defendants.

INDICTMENT

The Grand Jury Charges:

Count I.

On or about March 15, 1946, at Tacoma, Washington, Hans Forster, of Issaquah, Washington, L. Hicks Taylor, and Harold Erickson, willfully and knowingly attempted to defeat and evade a large part of the income tax due and owing by the said Hans Forster to the United States of America for the calendar year 1945, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington, at Tacoma, a false and fraudulent income tax return for and on behalf of the said Hans Forster, in which it was stated that his net income for said calendar year, computed on the community property basis, was the sum of \$37,319.35, and that the amount of tax due and owing thereon was the sum of \$19,037.16, whereas, as they then and there well knew, his net income for the said calendar year computed on the community property basis, was the

sum of \$112,833.35, upon which said net income there was owing to the United States of America an income tax of \$81,652.50.

All in violation of 26 U.S.C. 145(b).

Count II.

On or about March 14, 1947, at Tacoma, Washington, Hans Forster, of Issaquah, Washington, L. Hicks Taylor, and Harold Erickson, willfully and knowingly attempted to defeat and evade a large part of the income tax due and owing by the said Hans Forster to the United States of America for the calendar year 1946, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington, at Tacoma, a false and fraudulent income tax return for and on behalf of the said Hans Forster, in which it was stated that his net income for said calendar year, computed on the community property basis, was the sum of \$23,352.20, and that the amount of tax due and owing thereon was the sum of \$8,158.41, whereas, as they then and there well knew, his net income for the said calendar year computed on the community property basis, was the sum of \$62,842.87, upon which said net income there was owing to the United States of America an income tax of \$33,969.57.

All in violation of 26 U.S.C. 145(b).

Count III.

On or about March 15, 1948, at Tacoma, Washington, Hans Forster, of Issaquah, Washington, L.

Hicks Taylor, and Harold Erickson willfully and knowingly attempted to defeat and evade a large part of the income tax due and owing by the said Hans Forster to the United States of America for the calendar year 1947, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington, at Tacoma, a false and fraudulent income tax return for and on behalf of the said Hans Forster, in which it was stated that his net income for said calendar year, computed on the community property basis, was the sum of \$33,036.84, and that the amount of tax due and owing thereon was the sum of \$13,761.52, whereas, as they then and there well knew, his net income for the said calendar year computed on the community property basis, was the sum of \$67,851.57, upon which said net income there was owing to the United States of America an income tax of \$37,417.20.

All in violation of 26 U.S.C. 145(b).

Count IV.

On or about March 11, 1949, at Tacoma, Washington, Hans Forster, of Issaquah, Washington, L. Hicks Taylor, and Harold Erickson willfully and knowingly attempted to defeat and evade a large part of the income tax due and owing by the said Hans Forster to the United States of America for the calendar year 1948, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington, at Tacoma, a false and fraudulent income tax

return for and on behalf of the said Hans Forster, in which it was stated that his net income for said calendar year, computed on the community property basis, was the sum of \$25,242.86, and that the amount of tax due and owing thereon was the sum of \$8,726.58, whereas, as they then and there well knew, his net income for the said calendar year computed on the community property basis, was the sum of \$82,827.57, upon which said net income there was owing to the United States of America an income tax of \$45,820.22.

All in violation of 26 U.S.C. 145(b).

Count V.

On or about March 15, 1950, at Tacoma, Washington, Hans Forster, of Issaquah, Washington, L. Hicks Taylor and Harold Erickson willfully and knowingly attempted to defeat and evade a large part of the income tax due and owing by the said Hans Forster and his wife, Evelyn Forster, to the United States of America for the calendar year 1949, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington at Tacoma, a false and fraudulent joint income tax return for and on behalf of the said Hans Forster and wife in which it was stated that their net income for said calendar year was the sum of \$70,445.09 and that the amount of tax due and owing thereon was the sum of \$28,409.80, whereas, as they then and there well knew, the net income of the said Hans Forster and wife for said calendar year

was the sum of \$168,951.78, upon which said net income there was owing to the United States of America an income tax of \$94,077.72.

All in violation of 26 U.S.C. 145(b).

Count VI.

On or about March 15, 1947, at Tacoma, Washington, Hans Forster, L. Hicks Taylor and Harold Erickson, who were the President, Secretary, and Office Manager, respectively, of the Issaquah Creamery Co., Inc., a corporation, did willfully and knowingly attempt to defeat and evade a large part of the taxes due and owing by said corporation to the United States of America for the calendar year 1946, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington at Tacoma a false and fraudulent tax return wherein they alleged that the net income of the corporation for the said calendar year was the sum of \$33,839.68 and that the total amount of tax due thereon was the sum of \$10,435.03, whereas, as they then and there well knew, the net income of the corporation for said calendar year was the sum of \$90,866.03, upon which net income the corporation owed to the United States of America a total tax of \$34,529.09.

All in violation of 26 U.S.C. 145(b).

Count VII.

On or about March 15, 1948, at Tacoma, Washington, Hans Forster, L. Hicks Taylor and Harold

Erickson, who were the President, Secretary, and Office Manager, respectively, of the Issaquah Creamery Co., Inc., a corporation, did willfully and knowingly attempt to defeat and evade a large part of the taxes due and owing by said corporation to the United States of America for the calendar year 1947, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington at Tacoma a false and fraudulent tax return wherein they alleged that the net income of the corporation for the said calendar year was the sum of \$39,272.93 and that the total amount of tax due thereon was the sum of \$12,314.65, whereas, as they then and there well knew, the net income of the corporation for said calendar year was the sum of \$89,993.95, upon which net income the corporation owed to the United States of America a total tax of \$34,197.70.

All in violation of 26 U.S.C. 145(b).

Count VIII.

On or about March 12, 1949, at Tacoma, Washington, Hans Forster, L. Hicks Taylor and Harold Erickson, who were the President, Secretary, and Office Manager, respectively, of the Issaquah Creamery Co., Inc., a corporation, did willfully and knowingly attempt to defeat and evade a large part of the taxes due and owing by said corporation to the United States of America for the calendar year 1948, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington at Tacoma a false

and fraudulent tax return wherein they alleged that the net income of the corporation for the said calendar year was the sum of \$31,970.48 and that the total amount of tax due thereon was the sum of \$9,444.36, whereas, as they then and there well knew, the net income of the corporation for said calendar year was the sum of \$108,727.99, upon which net income the corporation owed to the United States of America a total tax of \$41,316.64.

All in violation of 26 U.S.C. 145(b).

Count IX.

On or about March 14, 1950, at Tacoma, Washington, Hans Forster, L. Hicks Taylor and Harold Erickson, who were the President, Secretary and Office Manager, respectively, of the Issaquah Creamery Co., a corporation, did willfully and knowingly attempt to defeat and evade a large part of the taxes due and owing by said corporation to the United States of America for the calendar year 1949, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington, at Tacoma, a false and fraudulent tax return wherein they alleged that the net income of the corporation for the said calendar year was the sum of \$49,725.48 and that the total amount of tax due thereon was the sum of \$18,854.51, whereas, as they then and there well knew, the net income of the corporation for said calendar year was the sum of \$223,236.59, upon which net income the corporation owed to the

United States of America a total tax of \$84,829.90.
All in violation of 26 U.S.C. 145(b).

A True Bill.

/s/ A. S. HUNGERFORD,
Foreman

/s/ J. CHARLES DENNIS,
United States Attorney

/s/ HARVEY SAGER,
Assistant United States Attorney

Cr. No. 4441. Comm. No. 5286, 5287, 5288, Bail:
\$2,500; \$2,500; \$1,500. Bench Warrant: No. Secret:
No.

Presented to the Court and Filed Aug. 1, 1952.

[Title of District Court and Cause.]

MOTION FOR SEVERANCE

Comes Now the defendant, L. Hicks Taylor, by Little, LeSourd, Palmer, Scott & Slemmons, his attorneys, and moves the Court for the entry of an order for a severance of the defendants herein for trial, upon the ground that said defendant will be prejudiced by the joinder of all of the above-named defendants for trial.

This motion is made in accordance with Rule 14 of the Federal Rules of Criminal Procedure and is based upon the records and files in this cause and

upon the affidavit of the defendant, L. Hicks Taylor.

Dated this 5th day of January, 1954.

/s/ LITTLE, LeSOURD, PALMER,
SCOTT & SLEMMONS,

/s/ KENNETH A. COX,
Attorneys for Defendant, L. Hicks
Taylor

Acknowledgments of Service attached.

[Endorsed]: Filed January 6, 1954.

[Title of District Court and Cause.]

AFFIDAVIT OF DEFENDANT L. HICKS
TAYLOR IN SUPPORT OF MOTION FOR
SEVERANCE

State of Washington,
County of King—ss.

L. Hicks Taylor, being first duly sworn, upon oath deposes and says:

That he is one of the defendants in the above-named cause and makes this affidavit in support of his motion for an order granting a severance of the defendants for trial;

That he and the other two defendants named above have been indicted in an indictment including nine counts; that in five of such counts they are charged with willfully and knowingly attempting to evade income tax owing by the defendant Hans Forster, or by said defendant and his wife, by filing

and causing to be filed false and fraudulent income tax returns for said defendant Hans Forster, or for said defendant and his wife, for five different calendar years; that in the remaining four counts the defendants are charged, as officers of Issaquah Creamery Co., Inc., a corporation, with willfully and knowingly attempting to evade income tax owing by said corporation by filing and causing to be filed false and fraudulent income tax returns for said corporation for four different calendar years;

That upon the basis of statements and affidavits made by the defendants Forster and Erickson to the Internal Revenue Agents investigating the tax returns of the defendant Forster and of Issaquah Creamery Co., Inc., and by other persons interviewed by said Agents in connection with said investigation, and upon the further basis of the testimony adduced in proceedings before the Honorable John A. Burns, United States Commissioner, on March 28 and April 1, 1952, on preliminary hearings in re the defendants in this cause, affiant believes that the government will present strong cases against the defendants Forster and Erickson on all nine counts and with respect to all of the allegedly unreported income, but that the evidence against affiant will be partial and incomplete, going only to claimed involvement as to isolated items or transactions for particular years; that affiant therefore feels, and is advised by his counsel, that he will be substantially prejudiced if he is forced to stand trial jointly with the defendants Forster and Erickson because the jury will in all probability be un-

able to distinguish clearly between the evidence as to acts of the defendants Forster and/or Erickson, on one hand, and the much smaller volume of evidence which the government contends establishes knowledge or complicity on the part of affiant; that as a result affiant is likely to be judged, not on the basis of evidence relating directly to him, but upon the more voluminous evidence with respect to the other named defendants;

That affiant was for some years, including those involved in this proceeding, the accountant for the defendant Hans Forster and for various of his corporate enterprises; that said defendant resides in Issaquah, Washington, and that the headquarters of his most important enterprises are there or at other points outside Seattle, and that the basic, original books and records of the defendant Forster and his said enterprises were kept at Issaquah by said defendant and by the defendant Harold Erickson, who was in the employ of the said defendant Forster; that affiant, on the other hand, maintained public accounting offices in downtown Seattle and did work for as many as three hundred other clients in addition to the work he did for the defendant Forster; that affiant went periodically to Issaquah for a day or less, for the purpose of picking up from defendant Erickson, or directly from defendant Forster, totals and summaries derived from the records kept by or for them, which said totals affiant posted to general ledgers maintained in his Seattle office, from which affiant periodically prepared balance sheets and profit and loss statements,

and ultimately prepared the income tax returns here in question, each such return having been stamped by him with a rubber stamp reading: "This return is prepared from the books of the client without audit of details contained therein."

That when charges were filed against the defendants named herein in March, 1952, the defendant Forster released to the newspapers carefully prepared stories emphasizing his beginnings as a penniless immigrant, carefully playing up the fact that affiant had previously pleaded guilty to a charge of attempted evasion of his own income tax liability, and stating that he, Forster, was innocent, and was in trouble only because he had trusted affiant; that both before the filing of said charges and since, the defendant Forster has conducted an artful campaign to attempt to shift to affiant responsibility for his own acts, and has induced the defendant Erickson to join him in this effort; that as a result affiant believes, and is advised by his counsel, that he will be substantially prejudiced if he is forced to stand trial jointly with the defendants Forster and Erickson because of the concerted effort they have made, and will undoubtedly continue to make during the trial, to fix upon him responsibility for their own acts;

That because of the foregoing, affiant believes that if he is forced to stand trial jointly with defendants Forster and Erickson, statements, testimony, and documentary evidence will be offered which will be admissible as against defendant Forster and/or defendant Erickson, but inadmissible as to affiant;

that affiant believes he will be substantially prejudiced thereby because no precautionary instructions can serve to erase from the minds of the members of the jury statements or testimony bearing primarily on the guilt of the defendants Forster and/or Erickson but seeming incidentally to implicate affiant, and no other procedural safeguards can adequately guarantee that affiant will be judged, as he is entitled to be, only upon evidence bearing directly upon his part in connection with the matters here in issue, and only upon evidence which under all the rules is properly admissible as to him.

/s/ L. HICKS TAYLOR

Subscribed and Sworn to before me this 6th day of January, 1954.

[Seal] /s/ KENNETH A. COX,
Notary Public in and for the State of Washington,
residing at Seattle.

Acknowledgments of Service attached.

[Endorsed]: Filed January 6, 1954.

[Title of District Court and Cause.]

VERDICT

We, the Jury in the above-entitled cause, find the Defendant, Hans Forster is guilty as charged in Count I of the Indictment,

Is guilty as charged in Count II of the Indictment,

Is guilty as charged in Count III of the Indictment,

Is guilty as charged in Count IV of the Indictment,

Is guilty as charged in Count V of the Indictment,

Is guilty as charged in Count VI of the Indictment,

Is guilty as charged in Count VII of the Indictment,

Is guilty as charged in Count VIII of the Indictment,

Is guilty as charged in Count IX of the Indictment.

Date: May 14th, 1954.

/s/ HAROLD F. CRAFT,
Foreman

[Endorsed]: Filed May 14, 1954.

[Title of District Court and Cause.]

MOTION FOR ACQUITTAL AND IN THE ALTERNATIVE FOR A NEW TRIAL

Comes now the defendant, Hans Forster, and feeling aggrieved at the verdict of the jury moves this Court for a judgment of acquittal and in the alternative that a new trial be granted said defendant in the interest of justice for the following reasons:

I.

Inconsistency of the verdict;

II.

Error in instructions to which exceptions were duly taken;

III.

Errors of law during the trial to which exception was duly taken;

IV.

That the verdict is against the weight of the evidence; and

V.

That a miscarriage of justice has resulted.

/s/ TRACY E. GRIFFIN,
Attorney for Defendant
Hans Forster

Acknowledgment of Service attached.

[Endorsed]: Filed May 18, 1954.

[Title of District Court and Cause.]

ORDER DENYING DEFENDANT FORSTER'S
MOTION FOR ACQUITTAL AND IN THE
ALTERNATIVE FOR A NEW TRIAL

The motion of Defendant, Hans Forster having come on regularly to be heard before the undersigned Judge of the above entitled Court on June 4, 1954, Charles P. Moriarty, United States District Attorney appearing for the Plaintiff, the Defendant, Hans Forster being personally present and represented by his Attorney, Tracy E. Griffin, the Court having heard the argument of respective

counsel and having fully considered the motion, now, therefore,

It Is Hereby Ordered, Adjudged and Decreed that the motion of the Defendant, Hans Forster for a judgment of acquittal and in the alternative for a new trial be and the same is hereby denied. An exception to the foregoing ruling is hereby allowed by the Court.

Done in Open Court this 8th day of June, 1954.

/s/ WILLIAM J. LINDBERG,
U. S. District Judge

Presented by:

/s/ CHARLES P. MORIARTY,
U. S. District Attorney

[Endorsed]: Filed June 8, 1954.

In the United States District Court, Western District of Washington, Northern Division

No. 48929

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HANS FORSTER,

Defendant.

JUDGMENT, SENTENCE AND
COMMITMENT

On this 7th day of June, 1954, the attorney for the Government, and the defendant, Hans Forster,

appearing in person and being represented by Tracy E. Griffin, his attorney, the Court finds the following:

That prior to the entry of his plea, a copy of the Indictment was given the defendant and the defendant entered a plea of not guilty and a trial was held, resulting in a verdict of guilty as to Counts I to IX, inclusive, thereof; that the Probation Officer of this district has made a presentence investigation and report to the Court; now, therefore,

It Is Adjudged that the defendant has been convicted by jury verdict and is guilty of the offense of violation of Section 145(b), Title 26, U.S.C., as charged in Counts I to IX, inclusive, of the Indictment, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged in Counts I to IX, inclusive, and is convicted.

It Is the Sentence of the Court that as to Count I of the Indictment he be committed to the custody of the U. S. Attorney General or his authorized representative for a period of Three (3) Years in such institution as the U. S. Attorney General or his authorized representative shall by law designate;

As to Count II of the Indictment he be committed to the custody of the U. S. Attorney General or his authorized representative for a period of Three (3)

Years in such institution as the U. S. Attorney General or his authorized representative shall by law designate;

As to Count III of the Indictment he be committed to the custody of the U. S. Attorney General or his authorized representative for a period of Three (3) Years in such institution as the U. S. Attorney General or his authorized representative shall by law designate;

As to Count IV of the Indictment he be committed to the custody of the U. S. Attorney General or his authorized representative for a period of Three (3) Years in such institution as the U. S. Attorney General or his authorized representative shall by law designate;

As to Count V of the Indictment he be committed to the custody of the U. S. Attorney General or his authorized representative for a period of Three (3) Years in such institution as the U. S. Attorney General or his authorized representative shall by law designate;

As to Count VI of the Indictment he be committed to the custody of the U. S. Attorney General or his authorized representative for a period of Three (3) years in such institution as the U. S. Attorney General or his authorized representative shall by law designate;

As to Count VII of the Indictment he be committed to the custody of the U. S. Attorney General or his authorized representative for a period of Three (3) Years in such institution as the U. S.

Attorney General or his authorized representative shall by law designate;

As to Count VIII of the Indictment he be committed to the custody of the U. S. Attorney General or his authorized representative for a period of Three (3) Years in such institution as the U. S. Attorney General or his authorized representative shall by law designate;

As to Count IX of the Indictment he be committed to the custody of the U. S. Attorney General or his authorized representative for a period of Three (3) Years in such institution as the U. S. Attorney General or his authorized representative shall by law designate.

It Is the Further Order of the Court that the imprisonment sentence as to Counts II, III, IV, V, VI, VII, VIII and IX shall run concurrently with and not consecutively to the sentence imposed herein on Count I of the Indictment.

It Is the Further Order of the Court that the Defendant, Hans Forster pay a fine as to Count I of the Indictment in the sum of \$3,000.00; \$3,000.00 as to Count II of the Indictment; \$3,000.00 as to Count III of the Indictment; \$3,000.00 as to Count IV of the Indictment; \$3,000.00 as to Count V of the Indictment; \$3,000.00 as to Count VI of the Indictment; \$3,000.00 as to Count VII of the Indictment; \$3,000.00 as to Count VIII of the Indictment and \$1,000.00 as to Count IX of the Indictment, making a total of \$25,000.00 in fines, said

finer to be deposited in the Registry of the Court and the payment thereof to await the outcome of any appeal.

It Is the Further Order of the Court that the Defendant, Hans Forster pay the costs of prosecution.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of this Judgment, Sentence and Commitment to the United States Marshal or other qualified officer, and that said copy serve as the commitment of the defendant.

Done in Open Court this 8th day of June, 1954.

/s/ WILLIAM J. LINDBERG,
U. S. District Judge

Presented and approved by:

/s/ CHARLES P. MORIARTY,
United States District Attorney

[Endorsed]: Judgment filed and entered June 8, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

1. Name and address of appellant: Hans Forster, an individual, whose address is Issaquah, Washington.

2. Name and address of attorneys for appellant: Tracy E. Griffin, 11th Floor, American Building,

Seattle, Washington; and J. Kenneth Brody, 603 Central Building, Seattle, Washington.

3. Offense: The offenses which the appellant was charged with and convicted of consist of nine counts, each and all in violation of 26 U.S.C. 145(b), count 1 being that on or about March 15, 1946 the appellant Hans Forster willfully and knowingly attempted to defeat and evade a large part of the income tax due and owing by him to the United States for the calendar year 1945 by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington at Tacoma, a false and fraudulent income tax return. Counts 2, 3, 4 and 5 are identical to that of count 1 except they involve the tax years respectively 1946 through 1949. Counts 6 through 9 inclusive deal with the income tax returns of Issaquah Creamery Co., Inc., a corporation, for the calendar years 1946 through 1949 inclusive, and in general Hans Forster, the appellant herein, who was President of said corporation during said period of time, is charged with willfully and knowingly attempting to evade a large part of the taxes due and owing by said corporation for said years (each count representing one year) by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington at Tacoma, a false and fraudulent tax return.

4. An Order denying the motion for acquittal or in the alternative for a new trial of Hans Forster,

the appellant herein, was signed and entered on June 8, 1954.

5. Judgment was entered by the Honorable William J. Lindberg, Judge of the above entitled court, on June 8, 1954, wherein the appellant Hans Forster was found guilty as charged on counts 1 to 9 inclusive of the indictment and the court adjudged the appellant to pay to the United States of America a fine of \$25,000.00, (\$3,000.00 on each count 1 to 8 inclusive and \$1,000.00 on count 9), the cost of prosecution, and sentenced the appellant Hans Forster to serve three (3) years upon each count, sentences to run concurrently.

6. Defendant has been released on bond (\$2,500.00) and has deposited with the Clerk of the above entitled court the sum of \$25,000.00 as security for payment of the said \$25,000.00 fine.

I, the above named appellant, Hans Forster, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above judgment.

Dated this 11th day of June, 1954.

/s/ HANS FORSTER

Presented by:

/s/ TRACY E. GRIFFIN,

One of the attorneys for the appellant
Hans Forster

Acknowledgment of Service attached.

[Endorsed]: Filed June 11, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit, and Rule 39(b)(1) of the Federal Rules of Criminal Procedure, and designation of counsel, I am transmitting the following original papers in the file dealing with the action, together with exhibits, as the record on appeal herein from the judgment, sentence and commitment filed June 8, 1954, and the Order Denying Motion for Acquittal or a New Trial, filed June 8, 1954, to the United States Court of Appeals for the Ninth Circuit at San Francisco, said papers being identified as follows:

1. Indictment, filed August 1, 1952.
123. Verdict, filed May 14, 1954.
128. Motion for Acquittal and in the Alternative for a New Trial, filed May 18, 1954.
132. Order Denying Motion of Defendant Forster for Acquittal and in the Alternative for a New Trial, filed June 8, 1954.
133. Judgment, Sentence and Commitment, filed June 8, 1954.
135. Notice of Appeal, filed June 11, 1954.
154. Court Reporter's Transcript of Testimony

and Proceedings, (37 volumes) filed Feb. 7, 1955.

156. Statement of Points on Appeal of Appellant, filed Feb. 11, 1955.

157. Designation of Contents of Record on Appeal, filed Feb. 11, 1955.

Exhibits as follows:

Plaintiff Exhibits 1 to 31 incl.; 43 to 46 incl.; 49 to 72 incl.; 74 to 85 incl.; 87 to 118 incl.; 120 to 128 incl.; 130 to 135 incl.; 137 to 160 incl.; 161 to 199 (a to j incl.); 200; 202 to 219 incl.; 220 to 256 incl.; 258; 259, 261 to 272 incl.; 274 to 276 incl.; 278 to 282 incl.; 285 to 291 inclusive, and 293.

Defendant Exhibits A-1; A-3 to A-12 incl.; A-14; A-16; A-26; A-28; A-31; A-32; A-34, to A-49 inclusive; A-51, A-52; A-54 to A-68 incl.; A-70, A-71; A-73 to A-75 incl.; A-77; A-78; A-80 to A-104 incl.; A-106; A-109 to A-112 incl.; A-115; A-117 to A-127 inclusive; A-129 to A-143 inclusive; A-145.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for preparation of the record on appeal in this cause, to-wit: Filing fee, Notice of Appeal, \$5.00; and that said amount has been paid to me on behalf of the appellant by his attorneys.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle this 11th day of February, 1955.

[Seal]

MILLARD P. THOMAS,
Clerk

/s/ By TRUMAN EGGER,
Chief Deputy

[Title of District Court and Cause.]

SUPPLEMENTAL CERTIFICATE
OF CLERK

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit, and Rule 39(b)(1) of the Federal Rules of Criminal Procedure, and designation of counsel, I am transmitting herewith, supplemental to the record on appeal in said cause, the following original additional papers or documents dealing with the action, to-wit:

53-A. Motion of defendant L. Hicks Taylor for Severance, filed January 6, 1954.

55. Affidavit of Defendant L. Hicks Taylor in Support of Motion for Severance, filed Jan. 6, 1954.

158. Designation of Additional Portions of Record, filed 2/18/55.

159. Court Reporter's Transcript of Portion of Proceedings of February 4, 1954, filed March 11, 1955.

160. Court Reporter's Transcript of Portion of Proceedings of February 12, 1954, filed March 11, 1955.

161. Court Reporter's Transcript of Portion of Proceedings of February 17, 1954, filed March 11, 1955.

Witness my hand and official seal at Seattle, this
15th day of March, 1955.

[Seal] MILLARD P. THOMAS,
 Clerk
 /s/ By TRUMAN EGGER,
 Chief Deputy

[Title of District Court and Cause.]

SECOND SUPPLEMENTAL CERTIFICATE
OF CLERK

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit, and Rule 39(b)(1) of the Federal Rules of Criminal Procedure, I am transmitting herewith, supplemental to the record on appeal in said cause, the following additional document dealing with the action, to-wit:

162. Designation by Plaintiff of Additional Contents of Record on Appeal, filed April 5, 1955.

Witness my hand and official seal at Seattle this
8th day of April, 1955.

[Seal] MILLARD P. THOMAS,
 Clerk
 /s/ By TRUMAN EGGER,
 Chief Deputy

In the United States District Court, Western District of Washington, Northern Division

No. 48,929

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HANS FORSTER, L. HICKS TAYLOR and
HAROLD ERICKSON, Defendants.

TRANSCRIPT OF PROCEEDINGS

Had in the above-entitled and numbered cause, before a Petit Jury, duly empaneled, and the Honorable William J. Lindberg, a United States District Judge, at Seattle, Washington, commencing at 9:51 o'clock a.m., on the 29th day of January, 1954. [1*]

* * * * *

Mr. Moriarty?

Mr. Moriarty: May it please the Court, Counsel for the Defense, and my Associates; Ladies and Gentlemen of the Jury:

It is now my function to read to the Jury the Indictment which was returned by the Grand Jury of this District and which is the paper charge upon which the Government proposes to proceed.

To this—to each of these charges—the Defendants and each of them have entered a plea of not guilty and the Government is under the obligation

* Page numbers appearing at foot of page of original Reporter's Transcript of Record.

to present evidence to prove the guilt beyond a reasonable doubt.

Count I of the Indictment charges that:

“On or about March 15, 1946, at Tacoma, Washington, Hans Forster, of Issaquah, Washington, L. Hicks Taylor, and Harold Erickson, willfully and knowingly attempted to defeat and evade a large part of the income tax due and owing by the said Hans Forster to the United States of America for the calendar year 1945, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue District of Washington, at Tacoma, a false and fraudulent income tax return for and on behalf of the said Hans Forster, in which it was stated that his net income for [6] said calendar year, computed on the community property basis, was the sum of \$37,319.35, and that the amount of tax due and owing thereon was the sum of \$19,037.16, whereas, as they then and there well know, his net income for the said calendar year computed on the community property basis, was the sum of \$112,833.35, upon which said net income there was owing to the United States of America an income tax of \$81,652.50.

“All in violation of 26 U.S.C. 145 (b).”

Count II of the Indictment charges:

“On or about March 14, 1947, at Tacoma, Washington, Hans Forster, of Issaquah, Washington, L. Hicks Taylor, and Harold Erickson, willfully and knowingly attempted to defeat and evade a large part of the income tax due and owing by the said Hans Forster to the United States of America for

the calendar year 1946, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington, at Tacoma, a false and fraudulent income tax return for and on behalf of the said Hans Forster, in which it was stated that his net income for said calendar year, computed on the community property basis, was the sum of \$23,352.20, and that the amount of tax due and owing thereon was the sum of \$8,158.41, whereas, as they then and there well [7] knew, his net income for the said calendar year computed on the community property basis, was the sum of \$62,842.87, upon which said net income there was owing to the United States of America an income tax of \$33,969.57.

“All in violation of 26 U. S. Code 145 (b).”

Count III of the Indictment charges that:

“On or about March 15, 1948, at Tacoma, Washington, Hans Forster, of Issaquah, Washington, L. Hicks Taylor, and Harold Erickson willfully and knowingly attempted to defeat and evade a large part of the income tax due and owing by the said Hans Forster to the United States of America for the calendar year 1947, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington, at Tacoma, a false and fraudulent income tax return for and on behalf of the said Hans Forster, in which it was stated that his net income for said calendar year, computed on the community property basis, was the sum of \$33,036.84, and that the amount of tax due and owing thereon was the

sum of \$13,761.52, whereas, as they then and there well knew, his net income for the said calendar year computed on the community property basis, was the sum of \$67,851.57, upon which said net income there was owing to the United States of America [8] an income tax of \$37,417.20.

“All in violation of 26 U.S. Code 145 (b).”

Count IV of the Indictment charges that:

“On or about March 11, 1949, at Tacoma, Washington, Hans Forster, of Issaquah, Washington, L. Hicks Taylor, and Harold Erickson willfully and knowingly attempted to defeat and evade a large part of the income tax due and owing by the said Hans Forster to the United States of America for the calendar year 1948, and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington, at Tacoma, a false and fraudulent income tax return for and on behalf of the said Hans Forster, in which it was stated that his net income for said calendar year, computed on the community property basis, was the sum of \$25,242.86, and that the amount of tax due and owing thereon was the sum of \$8,726.53, whereas, as they then and there well knew, his net income for the said calendar year computed on the community property basis, was the sum of \$82,827.57, upon which said net income there was owing to the United States of America an income tax of \$45,820.22.

“All in violation of 26 U. S. Code 145 (b).”

Count V of the Indictment charges that:

“On or about March 15, 1950, at Tacoma, [9]

Washington, Hans Forster, of Issaquah, Washington, L. Hicks Taylor and Harold Erickson willfully and knowingly attempted to defeat and evade a large part of the income tax due and owing by the said Hans Forster and his wife, Evelyn Forster, to the United States of America for the calendar year of 1949, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington at Tacoma, a false and fraudulent joint income tax return for and on behalf of the said Hans Forster and wife in which it was stated that their net income for said calendar year was the sum of \$70,445.09, and that the amount of tax due and owing thereon was the sum of \$28,409.80, whereas, as they then and there well knew, the net income of the said Hans Forster and wife for said calendar year was the sum of \$168,951.78, upon which said net income there was owing to the United States of America an income tax of \$94,077.72.

“All in violation of 26 U. S. Code 145 (b).”

Count VI of the Indictment charges that:

“On or about March 15, 1947, at Tacoma, Washington, Hans Forster, L. Hicks Taylor and Harold Erickson, who were the President, Secretary, and Office Manager, respectively, of the Issaquah [10] Creamery Co., Incorporated, a corporation, did willfully and knowingly attempt to defeat and evade a large part of the taxes due and owing by said corporation to the United States of America for the calendar year 1946, by filing and causing to be filed with the Collector of Internal Revenue for

the Internal Revenue Collection District of Washington at Tacoma a false and fraudulent tax return wherein they alleged that the net income of the corporation for the said calendar year was the sum of \$33,839.68 and that the total amount of tax due thereon was the sum of \$10,435.03, whereas, as they then and there well knew, the net income of the corporation for said calendar year was the sum of \$90,866.03, upon which net income the corporation owed to the United States of America a total tax of \$34,529.09.

“All in violation of 26 U. S. Code 145 (b).”

Count VII of the Indictment charges that:

“On or about March 15, 1948, at Tacoma, Washington, Hans Forster, L. Hicks Taylor and Harold Erickson, who were the President, Secretary, and Office Manager, respectively, of the Issaquah Creamery Co., Incorporated, a corporation, did willfully and knowingly attempt to defeat and evade a large part of the taxes due and owing by said corporation [11] to the United States of America for the calendar year 1947, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection of Washington at Tacoma a false and fraudulent tax return wherein they alleged that the net income of the corporation for the said calendar year was the sum of \$39,272.93 and that the total amount of tax due thereon was the sum of \$12,314.85, whereas, as they then and there well knew, the net income of the corporation for said calendar year was the sum of \$89,-

993.95, upon which net income the corporation owed to the United States of America, a total tax of \$34,197.70.

“All in violation of 26 U. S. Code 145 (b).”

Count VIII of the Indictment charges that:

“On or about March 12, 1949, at Tacoma, Washington, Hans Forster, L. Hicks Taylor and Harold Erickson, who were the President, Secretary, and Office Manager, respectively, of the Issaquah Creamery Co., Incorporated, a corporation, did willfully and knowingly attempt to defeat and evade a large part of the taxes due and owing by said corporation to the United States of America for the calendar year 1948, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue [12] Collection District of Washington at Tacoma a false and fraudulent tax return wherein they alleged that the net income of the corporation for the said calendar year was the sum of \$31,970.48 and that the total amount of tax due thereon was the sum of \$9,444.36, whereas, as they then and there well knew, the net income of the corporation for said calendar year was the sum of \$108,727.99, upon which net income the corporation owed to the United States of America a total tax of \$41,316.64.”

Count IX of the Indictment charges that:

“On or about March 14, 1950, at Tacoma, Washington, Hans Forster, L. Hicks Taylor and Harold Erickson, who were the President, Secretary, and Office Manager, respectively, of the Issaquah Creamery Co., a corporation, did willfully and knowingly

attempt to defeat and evade a large part of the taxes due and owing by said corporation to the United States of America for the calendar year 1949, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington at Tacoma, a false and fraudulent tax return wherein they alleged that the net income of the corporation for the said calendar year was the sum of \$49,725.48 and that the total amount of [13] tax due thereon was the sum of \$18,854.51, whereas, as they then and there well knew, the net income of the corporation for said calendar year was the sum of \$223,236.59, upon which net income the corporation owed to the United States of America a total tax of \$84,829.90."

The Government in making an opening statement in this case is doing so in the hope that we may be helpful in indicating to you some of the matters of proof required of the Government.

Briefly, this is a tax evasion case by which three Defendants, Hans Forster, L. Hicks Taylor, and Harold Erickson are charged as principals.

The Government—the Court will tell you, and we affirm and Counsel for the Defense will reaffirm that the opening statement is not in any way evidence in the case. It is the chart by which the Government of the United States, through its duly appointed officers, bring to your attention a claimed violation of law and sets out briefly and generally what it expects to prove. Anything which may be said by me in this opening statement which is not

supported by the evidence later introduced should be absolutely disregarded and what is said in any opening statement by the Defense, or by their counsel in their respective behalves, is not evidence of any [14] fact.

The Government has this burden of proof and to this we will direct our evidence.

This case may be somewhat longer than the usual criminal case and somewhat more complicated for the proper presentation of the case. It will be necessary that a large number of checks, bank accounts, volumes of bookkeeping records and statements of the parties will be introduced and from which qualified witnesses, both civil servants of the Government and others, will make compilations and observations. Some of this evidence will come from witnesses who are still employed under the direction of Hans Forster, some from business associates—employees of other companies, banks and investment houses, and some of it from field investigations by Government employes.

I do not think that after the documents are identified and the understatement of taxable income proven in the presentation of the evidence there will be any serious disagreement between the Government and the Defendants as to the fact of the understatement of income and the consequent understatement of tax.

The defense of this matter will be, to use [15] the vernacular, “who done it?”, and the lack of intent on the part of the several defendants to avoid implication in tax evasion. This will be evident

from statements made by each of the Defendants to Government witnesses during the investigation and while no one contested seriously the understatement of income and the failure to pay tax thereon, each Defendant claims that one or another Defendant caused or permitted or committed the violation. We believe that the evidence will show that they all did freely, fully and fraudulently participate and while we believe the proof will show beyond a reasonable doubt that taxes evaded exceeded several hundred thousands of dollars, it will be for you to decide whether one, two, three or all of the Defendants acted with common purpose and intent for tax evasion.

For a proper identification on the part played by the various parties in an outline of the case, the Government expects to prove that Hans Forster, now approximately fifty-odd years of age, was a native of Switzerland. He received an early education in the schools of his country and there served an apprenticeship in the art of cheese making and acquired a valuable fund of knowledge about this food product and this art enabled him in 1926 to become [16] associated with the Issaquah Creamery Co., a corporation, located at Issaquah, Washington, and shortly thereafter to become the sole owner of this corporation. From this business he gradually expanded to become the owner and manager of other businesses related to the milk, cheese, cream, ice cream and dairy businesses such as the Alpine Dairy, the Puyallup Creamery Company, the Renton Ice and Ice Cream Company, Finstad

and Utgard, Apex Farms, Arctic Gardens, and other companies.

We will show by the evidence that he was an astute and keen business man and through the years, has evidenced the tax consciousness that goes with the problems of empire and that he was thoroughly familiar with the minutest details of his various businesses.

We will further show that he served and took an active and energetic part in the business affairs of his community and as a bank director and managing director of all of his enterprises.

In fact, we believe the evidence will show that the payment of many peculiarly personal items of expense and investments could not have been paid or even incurred without the active personal knowledge of Hans Forster. The direction of the book [17] entries had to come from him. We believe the evidence will convince you that the evasion could not have happened without his knowledge, his direction, and his active aid.

The next Defendant as it appears in the Indictment is Mr. L. Hicks Taylor. We will show he is approximately sixty years of age and a native Washingtonian, educated in the Seattle Public Schools in the University of Washington night school and a graduate accountant and from La Salle Extension University. In the course of his training for his profession he served in the office of City Treasurer in Seattle, King County Auditor's Office, and was employed for a time by Price Waterhouse and Company, a nationally known firm

of accountants. In 1919 we will show he qualified as a licensed public accountant and thereafter for over thirty years prepared income tax returns, examined them, and advised clients on the tax consequences of their business ventures.

His ability has been recognized by his accountant associates by election to the State Presidency of the Washington State Association of Licensed Public Accountants. We will show that he was associated with the Issaquah Creamery Company as an [18] accountant prior to Hans Forster's connection with the company. We believe that the evidence will develop circumstantially and otherwise that after consultation with Hans Forster he directed the methods to be followed in manipulating the books and records and fully cooperated with the evasion scheme. We are not certain the evidence will disclose that he had knowledge of everything that was done in regard to tax evasion but we will show that the principal and circumstantial matters—in the principal and substantial matters that Mr. Taylor was a stockholder and officer of these corporations and that he was authorized to sign the checks on most of the accounts and attended the corporate meetings and conducted the arrangements and generally familiarized himself with the tax problems resulting therefrom. We think the evidence will show that the inspiration and reason for the tax evasion came from Hans Forster and that the evidence will show that L. Hicks Taylor master-minded the details and his instructions were willingly and knowingly carried out by another.

We will show the next named defendant is Harold Erickson, also a native son of the State of Washington and after graduation from high school in his early years engaged in banking and by his ability [19] established himself after a few years as the cashier of the Snoqualmie State Bank. He left this bank to become a bookkeeper and office man with the Washington Cooperative Farmers Association and in 1935 sometime after Hans Forster and L. Hicks Taylor became associated he entered the employ of the Issaquah Creamery Company and became office manager of the company in 1936 and thereafter during all the times mentioned in the Indictment was primarily responsible for the original entries in the books and records of the various companies of Mr. Forster. The evidence will show that Harold Erickson fully agreed with the program originated by Forster and worked out by Taylor and further the evidence will show that the tax evasion could not have been attempted or completed without Erickson. It took the three working in unison to accomplish the plan.

When Erickson became associated with Mr. Forster we will show he had ten years experience in accounting and tax matters and he acknowledged some of the returns that will be filed as exhibits in this case as a notary public. He made entries in the books which were false and it will be shown that in '48 at the close of the year, according to his own [20] statement at the direction of Mr. Taylor he arbitrarily reduced the inventory in 1948 by

a relatively small sum of twenty-five thousand dollars.

We believe it is apparent that the evidence will show that Mr. Forster must have directed the alteration of the books. We do not claim he made the actual entries.

It will be further shown that Hans Forster in 1949 realizing that he had a large taxable income directed that certain adjustments were to be made and ordered the adjustments which arbitrarily reduced the income of the corporation by the sum of approximately eighty thousand dollars so as to avoid a higher income tax bracket and we will show that Taylor and Erickson, upon direction from Forster, made false entries to accomplish the disappearance of this income.

We will show by evidence that so cleverly manipulated were the books that a national firm of accountants employed by Mr. Forster and without Mr. Taylor's assistance were unable from a close review of the books to ascertain some of the sources of income until they tried to reconcile their statements and then, and then only, did Mr. Erickson admit some manipulation had been present. [21]

It is the Government's intention that the proof will show that Mr. Forster is the person who substantially profited from the violation and that Mr. Erickson willingly handled hundreds of details of the violation and that Mr. Taylor supervised and arranged the formula to be followed.

We will show that each of them were aware of the tax evasion. The evidence we believe will estab-

lish that each Defendant shifts the blame to the other, one saying he followed a system that just developed, one saying that his troubles were caused by an inefficient office manager and a careless accountant, another saying that he had no knowledge of the secreting that occurred in Issaquah and that he made his accounts from the records as shown to him. But one thing they will agree on is that the net result of all these errors were beneficial to Forster and not to the Government.

You can, if you hear any explanations, give to all such explanations the weight they deserve, if any.

The Indictment has been read to you and I will again summarize those allegations and relate them to the proof.

Briefly stated, Count I of the Indictment [22] charges that the 1945 tax return of Hans Forster, filed separately from his wife's, left off income taxes of \$75,515 upon which he should have paid \$62,615.34 additional taxes because in that year his income was in fact \$11,833.35 instead of \$37,319.35 as reported on his income——

Mr. Griffin: May I interrupt? Did you read \$62,000 there instead of \$81,000?

Mr. Moriarty: \$62,000. \$62,615.34.

In Count II it is charged that the income tax return for 1946 of Hans Forster, again filed separately, was understated by \$39,490.67 and a consequent understatement of income tax in the amount of \$25,811.16, because in that year his income was

in fact \$62,842.87 instead of \$22,352.20 as reported on his return.

On Count III it is charged that the income on his 1947 separate return of Hans Forster was understated by \$34,814.73 and a consequent understatement of income tax in the amount of \$23,655.60 because in that year his income tax was in fact \$67,851.57 instead of the \$33,036.84 he reported on his return.

In Count IV it is charged that the income on the 1948 return of Hans Forster, still not including [23] Mrs. Forster's income but separate, was understated by \$57,584.71 and a consequent understatement of income tax in the amount of \$37,093.4 because in that year his income was in fact \$82,827.57 instead of \$25,242.86 as reported on his return.

On Count V Forster filed a joint return with his wife and the Indictment charges that for the year 1949 their income was understated by \$98,506.69, and the income tax was understated by \$65,667.92, because in that year their income was in fact \$168,951.78 instead of \$70,445.09 as reported in their return.

Counts VI to IX involve understatements of income tax on the returns of the Issaquah Creamery Company, Incorporated, for the year 1949 to 1949, inclusive.

Count VI charges understatement of income to the corporation for the year 1946 in the amount of \$57,026.35 upon which additional tax is the amount of \$25,094.06 was owed because in that year the

corporation's income was in fact \$90,866.03 instead of the \$33,839.68 as reported on its return.

Count VII charges an understatement of income to the corporation for the year 1947 in the amount of \$50,721.02 upon which an additional tax in [24] the amount of \$21,883.05 was owed because in that year the corporation's income was in fact \$89,993.95 instead of \$39,272.93 as reported in the return.

Count VIII charges an understatement of income to the corporation for the year 1948 in the amount of \$76,757.51 upon which an additional tax in the amount of \$31,872.28 was owed because in that year the corporation's income was in fact \$108,727.99 instead of the \$31,970.48 as reported on his return.

Count IX charges an understatement of income to the corporation for the year 1949 in the amount of \$173,511.11 upon which additional tax in the amount of \$65,975.39 was owed because in that year the corporation's income was in fact \$223,236.59 instead of the \$49,725.48 reported on its return.

The Government proposes to prove additional income and evasion of tax against the Defendants in two ways.

One method will be proved by what is sometimes [25] called the net worth method. It simply means that if at the end of a year a man has in his possession more property than he had at the beginning of the year, it goes without saying that he accumulated it somehow unless he received it by gift. He must have got it by earning it and that was his income for that year.

You will be instructed by the Court concerning this but for a better understanding of the very nature and the voluminous proof, we can generalize this method as requiring the Government to prove first a source of income to the Defendant, secondly undisclosed income which of course would be in excess of the income declared by the Defendant, **thirdly** that arising therefrom there is an actual tax due and owing the United States, and **fourth** that this tax owing resulted from a willful attempt to defeat and evade this tax by the Defendant.

Let not the statement of net worth be confusing: Simply stated it is a bookkeeping name for a simple arithmetical solution or compilation of a man's income during the year. Net worth simply means the difference between a man's assets and his debts at any given time. For example, net worth means this: If I had one thousand dollars in the bank [26] on January 1st of this year and on December 31st of this year I had three thousand dollars in the same bank, had spent one thousand dollars for living expenses, I must have had an income of three thousand dollars during the year—the one thousand dollars I had at the beginning of the year is, of course, not counted, but the two thousand dollars and the one thousand dollars spent for living expenses make up three thousand dollars and that would be my income for the year.

The Government is authorized by law to use this method when the books and records of a tax payer or tax payers are found to be inadequate or incorrect. To take this method to find true income, and

this is what we propose to do in this case, it simply means that the Government has undertaken to present evidence to show you what the Defendants were worth at the beginning of the year and what he was worth at the end of the year, and this we show—then we show—by this we show that he had accumulated income during the year and if it follows his income was not truly stated he did not pay the proper tax to the Government as required by law.

In this case we will show you the net worth of Hans Forster at the end of the years for each of the years 1944, '45, '46, '47, 1948 and 1949. The [27] increase in Forster's net worth during each one of these years is, of course, arrived at by subtracting the net worth at the beginning of the instant year from the net worth at the end of the year. After we arrive at the increase in net worth then we must make a few extra additional subtractions in order to reach the net worth figure. First of all, if the tax payer received a gift, that would be subtracted. Then we would add to net worth what the Defendant spent for living expenses and what he paid out for income taxes because he had paid his living expenses and taxes during the year and, of course, did not have these items in his possession at the end of the year, for the reason that he had paid them during the year.

Now, you can well imagine it is not easy to compute the net worth of a person who has the many resources the Defendant Forster and his company possessed. The Government, however, expects the evidence to show item by item the assets and liabil-

ities which make up his net worth and the net worth of the companies at the end of each of the years and the personal expenditures to be added in striving at the taxable income for each year. This will take time and may be a little boring but it is necessary for a proper understanding of the facts. [28] Your close attention to these matters is earnestly solicited.

The Government, however, will not limit its proof of income to the use of the net worth method. By evidence we expect to show specific omissions of taxable income from all books and records of the businesses which Forster controlled and specific items of fraudulent and unjustified deductions taken on the books of these businesses and consequently taken into the income of Forster. This is what is called specific item evidence. It serves not only the purpose of computing additional income which should have been included in the returns of Forster and the Issaquah Creamery Co. but in addition it will serve to show you the deliberate intention of Hans Forster and his two co-Defendants and associates Taylor and Erickson to report less income to the United States and to pay less tax to the United States than should have been paid.

To highlight, it will appear from the evidence that Forster's accounts by his own independent auditors were at least three hundred thousand dollars short and in this regard I wish particularly to call to your attention this account number 198 which is the number of the savings account of Hans Forster [29] in the Washington State Bank at Issa-

quah. Into this account number 198 many of the items of tax evasion of taxable income found their way. Four checks of the Casein Company, a division of the Borden's Milk Company, totalling \$24,480.76 were deposited in account number 198.

You will further find that the personal expenditures of Mr. Forster were charged under a very interesting designation known as plant expenses. This plant expense was carried on the books of the Issaquah Creamery Company and also on the same books under other misleading designations. Mr. Forster got the benefit of these personal expenditures by the Issaquah Creamery Company paid the bill and, of course, took the expenditures as a tax deduction and paid less tax.

When Mr. Forster had a dog trained for hunting this was charged to plant expense. We will show that when Mr. Forster purchased stocks and bonds this was also charged to plant expenses. When Mr. Forster bought a television set for his home, that was also charged to plant expenses. When Mr. Forster purchased clothing and had them dry cleaned this was charged to plant expenses. When Mr. Forster made a trip to Europe with his daughters [30] this was charged to plant expense. When he purchased rugs for his home, this was charged as plant expense, all on the books of the Issaquah Creamery Company as company expenditures. Now, when he came to paying for the reception following his daughter's wedding, this was charged to advertising expense, and when he had traveller's checks

issued in one instance it was charged to supplies and in another instance to advertising.

He built a farm—a barn on his private farm and he charged it to plant expense. You will find outboard motors charged to plant expense and repayments paid by the Time Oil Company in cash were not even carried through the books but found their way into this account number 198. Account number 198 in the Washington State Bank we will show received much attention from Mr. Forster. We will show that interest that was paid to him, the rent of his farm that a tenant paid to him, are not reported together with unreported director's fees as a director of the Washington State Bank and finally it will appear from the evidence that Hans Forster purchased a Cadillac automobile for the personal use of his wife and charged it to truck expense for the Alpine Dairy. [31]

I am not proposing in the opening statement to itemize the items that will appear from the evidence but I would humbly ask you to approach each piece of evidence that the Government will place before you with an open mind unbiased by any observations that I have made and I promise that at the end of all the evidence you will see clearly that Hans Forster and the other Defendants and the Issaquah Creamery Company had a great deal more income and owed a great deal more income taxes than was paid out in the income tax returns filed with the Internal Revenue Service.

I wish only to remind you jurors that you do not sit here as legislators. Whether the law be harsh

or just or whatever punishment follows a violation of the law is of no concern of yours or mine. You are a panel to find the facts. It is your duty to listen to the evidence and collect your information from the witnesses and the documents and resolve the disputes from the testimony and find your verdict on the facts of which you are the constitutional judges. You sit here under the law of our Country. You have solemnly sworn that you are competent to decide this case without prejudice and sympathy and determine the guilt or innocence of the Defendant. No one, great though he may be, can exercise a higher function than yours. It should be [32] discharged under the instructions of the Court and a verdict rendered as you under your oath find the facts so to be.

The Court: Ladies and Gentlemen of the Jury:

We will now take the mid-morning recess. The Court at this time cautions you again that you are not to discuss among yourselves or with anyone any matters that may relate to the merits of this cause and you are not to form or express any opinions in regard to the merits of this cause until the case is finally submitted to you for your verdict.

You may now be excused for the recess and the Court will remain in session while you leave.

(Whereupon, the Jury retired from the court room.)

The Court: Court will be in recess for fifteen minutes.

(Whereupon, at 10:51 o'clock, a.m., a recess was had until 11:05 o'clock, a.m., January 29,

1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury. Who will make the first opening statement for the Defendants? [33]

Mr. Griffin: I will, if the Court please.

The Court: Will you be able to conclude by noon do you believe, or not?

Mr. Griffin: I am not certain. I will try. I hope to.

The Court: Would you like to continue on and finish? ..

Mr. Griffin: Yes, but I think I will.

The Court: And if it takes an additional five minutes, we will proceed, and if you wish to terminate and continue after lunch, if you will indicate it.

Mr. Griffin: Very well.

(Whereupon, the Jury was returned to the court room.)

The Court: You may be seated. It is stipulated that the Jury and all Defendants are present in the court room?

Mr. Griffin: Yes, your Honor.

Mr. Le Sourd: Yes, your Honor.

Mr. Moriarty: It is so stipulated.

The Court: Mr. Griffin?

Mr. Griffin: If the Court please.

The Court: Mr. Griffin?

Mr. Griffin: Counsel and Ladies and Gentlemen [34] of the Jury:

Mr. Kachlein, Mr. Brody and myself represent the Defendant Hans Forster.

Perhaps it is not often in a criminal case that the defense makes an opening statement before the trial commences.

More often, that statement is withheld until the defense learns what the Government's proof is.

In this instance, we have determined and I understand all counsel have determined to make the opening statement now.

From the standpoint of the defendant Forster, so that you will know there is a defense in this case insofar as he is concerned, and what that defense is and also so that we may, if we can, be helpful to you as Jurors in knowing what the facts of the case are and what the issues are, because in the ultimate analysis defendants one, two and three, either all or one separately, or none, may be guilty, you may more readily understand the position of each, and I would like to be as helpful as I trust I will be in just a moment in the matter of proof.

There has been read to you nine counts of this Indictment by the Government. I used the term "Government". We are all the Government. Nine counts [35] of this Indictment, repetition after repetition, figure after figure, and at this point, even you might be curious as to what actually is charged as to amounts. They are important.

Actually, in all these figures that have been read to you, the Government charges understatement of income tax of \$355,678.42.

It is just as simple as that.

And, it is just as simple, as far as the Defendant Forster is concerned, that there is that much tax due, or more, because of the understatement of income and the way the various books were handled, and, as far as the Defendant Forster is concerned, this case could be tried in two days.

Now, here is what happened, as the evidence will develop, and you will be called upon in the final analysis to determine only one question—the matter of intent to wilfully evade and defraud.

Mr. Moriarty suggested he would use the vernacular of “Who done it?” It is not only “Who done it?” but “How was it done, and why?”

Now, in this case, again using the vernacular and it is a beautiful place for the prosecution to be sitting, you will find each defendant knifing the other on the “Who done it?” [36]

But, as I have suggested, we will never get away from the Court’s instructions, and when you analyze it, I think it will be a matter of intent under all the facts insofar as we represent the Defendant Forster.

No, there is no dispute upon the material facts in this case on what was done. As to the conclusions to be drawn from it,—that the Government describes that there was a scheme, the particular term would be a conspiracy, but a plan to defraud—that we will establish is utterly without fact, and I believe that each defendant will so affirm, irrespective of the vicious conflict of interest between the defendants in this case, and on the matter of intent, it becomes important then to know what the

Defendant Hans Forster knew about books and bookkeeping or auditing and what his relationship was with the Defendant Hicks Taylor who—as the Government has suggested to you—was even so highly regarded in his profession that he was President of his Association.

The Government has suggested that they will prove who Hans Forster was, and we are not only going to prove who and what he was, but what he is, and our proof will show and it is important upon this matter of intent, his education and his background and what happened so [37] far as his knowledge is concerned, after this investigation by the Government, and even before the Indictment.

Hans Forster, the evidence will show, was born in Switzerland on March 4, 1904, and during the course of this trial, and in all likelihood, will attain the age now of fifty years.

His family consisted of two older brothers and his father and his mother.

What was his education? The evidence will show that he had what in this Country would be nine years' education. That is, six years of grade school and three years of Junior High. This is the full extent of his education.

The evidence will show that as far as the individual is concerned, talk about accounting, or bookkeeping, or things of that kind, he knew absolutely nothing. You are dealing, so far as those things are concerned, with the mind of a sixteen year old with that education. He completed that education

in 1919, actually at the age of fifteen years, and not sixteen.

He was employed by his father in the dairy business in Switzerland. That was his family's business or trade, which is not unusual in Switzerland, and in 1921, Mr. Forster—I will half the time be saying Foster, if it please the Court—Mr. Forster [38] was apprenticed out to an apprenticeship to learn the cheesemaking business. That is the way they handle those matters over there. We don't have apprenticeships here so much, as you may know, and he was instructed and learned the cheesemaking business, but at no time, either in working for his father, or his apprenticeship, did he have anything to do with any financial matters whatsoever, and at the end of this apprenticeship, he took an examination and he was—he became qualified as to what they called a journeyman cheesemaker. That was in 1923. As such, he became supervisor of a cheese factory in Switzerland, and he had one employee and there wasn't any financial bookkeeping in that connection in Switzerland—in 1923, December, and then January of 1924, when he would then be about eighteen years of age, he emigrated to Canada, intending to come to the United States under the quota, Treaty Quota. He couldn't come directly. He had to come through Canada, and he had an uncle, I believe, in Canada, and when he came, or left Switzerland, his father gave him ten thousand francs. You may know what that would be worth today, but at that time, they were worth twenty-five hundred dollars.

He could not talk English, and in Calgary, he attended night classes in English to learn the language. [39] He speaks well, but with an accent now. He went to work up there for Pete Burns and Company, which, as you may know, is one of the large meat packing concerns but in grading particularly cheese for them. I think he had to remain there for a certain length of time under the Treaty situation before entering the United States.

He came to the United States in the spring of 1924, and he had a brother-in-law in Idaho by the name of Reugger, and he had served his apprenticeship originally with Reugger, so Reugger had a little cheese factory in Idaho and Mr. Forster worked there for 22 months while he was waiting for the papers to clear so that he could legally enter the United States. He worked there also with Ernest Andres, who intended to come to the State of Washington, and open a cheese factory.

The evidence will show that there was some correspondence, and it was learned that there was an opening at Issaquah in this County and Andres determined to go into that business there.

Forster came into the United States and out to Issaquah in the spring of 1925, and helped in the construction of a cheese factory on a site which later became—there are new structures entirely except for [40] one wall—the Issaquah Creamery.

I am wrong about that. He did construct that cheese factory, and we will reach a fire pretty soon and the factory burned.

This now is in 1925 that we first find the defend-

ant at Issaquah, and there he milked cows for his room and board. His factory opened on May 1, 1925. Forster had charge of it, and had one boy assisting him—nothing to do with books or anything of that kind.

Andres was in full charge of the finances. Forster knew nothing about such things.

Out of this original twenty-five—ten thousand francs or twenty-five hundred dollars, Forster had loaned Andres—however you pronounce that name—twelve hundred dollars to help his purchase, or of the building of the cheese factory, at Issaquah.

Andres got into financial difficulties, and Forster obtained two thousand dollars from his father in Switzerland and took over the assets of that cheese factory as sole proprietor.

You can figure net worth beginning then, if you want to.

The matter was handled directly by Forster with no lawyers or accountants or anything in the purchase, and [41] he operated until December, 1926, when that cheese factory was destroyed by fire.

Forster obtained a position out there in Issaquah washing milk cans to make a living, and to support his wife, whom he had married in 1926, an Evelyn Totten, who was the daughter of a farmer out there. She had never had employment.

So, we have now reached, the evidence will show, 1926, and the cheese factory has been destroyed, and Forster has nothing, and he became a can washer at the Issaquah Creamery.

At that time, the Issaquah Creamery was oper-

ated by Clark Nettleton, former publisher of the *Post-Intelligencer* here in Seattle.

Nettleton suggested to Forster that if Nettleton would finance the opening of a cheese division in the Issaquah Creamery,—they didn't make cheese—could Forster make cheese? Of course, Forster said that he could, and Nettleton agreed to pay Forster with his own cheese. You see, it was a side product of the Creamery.

Forster purchased the equipment—the cheese-making equipment—on a conditional sales contract, one thousand dollars down payment, and that was very close to the limit of his resources, and now, we are in [42] 1926 or 1927, because he didn't start the manufacture of cheese until the spring of 1928, and that cheese was about a six hundred pound product per day.

Forster kept no books. It wasn't necessary. He didn't know how at that time, and had nothing to do with the bookkeeping end of it. And it wasn't an operation that required any such thing.

In 1929, and he would be about 25 years old then, I believe the evidence will show, Forster acquired one-half interest in the Issaquah Creamery. That is, Nettleton's corporation. The evidence will show that a man by the name of Peters had acquired the Nettleton stock. Peters was the banker in the little State Bank at Issaquah, and had acquired Nettleton's stock in that corporation.

Forster was operating the cheese end of it, and he purchased one-half of the stock and Forster was half owner in the machinery and equipment in the

enterprise, and even certain obligations, and taking a salary of \$150 a month.

There wasn't any lawyer that handled this transaction, so far as Forster was concerned, but, as of that time, Nettleton had employed L. Hicks Taylor as his accountant, and that is where Mr. Forster first met Mr. Taylor, as accountant for the Issaquah Creamery because [43] Mr. Taylor was handling the Issaquah books, and Nettleton's accounts, and also a member of, apparently the evidence will show, in handling the auditing account of Overlake Golf Club. Mr. Forster wasn't playing golf, but that was one of his accounts, and he was also a friend of Mr. Peters, and Taylor at that time was an accountant of good reputation, later, as Mr. Moriarty said, to become the head and president of Accounting Association of his group in the State of Washington.

So that is where Mr. Forster became acquainted with Mr. Taylor, although he had no part originally in his employment of Taylor as auditor at all.

There were two bookkeepers in the Issaquah Creamery at the time that Forster bought his half interest. One was Alice Neukirchen, who was later succeeded by her sister, Caroline, and in 1935, Harold Erickson, the defendant, was employed.

The Issaquah—no, the Snoqualmie Bank—Snoqualmie State Bank, I believe it was, with which Peters was connected—he was the one who sold this half interest of stock to Mr. Forster—that Bank became insolvent in 1930, and that Bank's share of

stock, or Peters' share of stock, was transferred to the Peoples National Bank.

Mr. Forster had theretofore obtained an option to [44] purchase the remaining stock of the Issaquah Creamery, which was a very small operation, and in 1930, he became the owner of all the shares of stock in that company.

And, in 1932, the Defendant Taylor was elected a director and secretary of the company.

Of course, he had succeeded as auditor, just by the natural course of events of having been the auditor representing Clark Nettleton when he owned all the stock of the Creamery.

Forster was a cheese-maker. He was not familiar with the Creamery operation as such to begin with and never with what later became the Ice Cream Departments, and all of those things.

So, we begin then about in the Depression days of 1930, and 1932, finding Forster indebted on the purchase of equipment, but in the small Creamery at Issaquah which becomes the large operation through know-how and ability of this man that it became until the second crash.

The first time that Forster started to work with what in his trade is the fresh milk business was in 1931, and then in the next three or four years, expansion began, with other concerns, perhaps, going out of business due to the depression, and Forster being able to go ahead. [45]

Now, the books during this period of time were audited by Hicks Taylor, and the evidence will show that he made in these early years of 1933 and 1934

very competent audits, and that he reconciled the books and records and the bank accounts, and that he was capable of so doing.

The evidence will so show that in these years, and succeeding years, Taylor's reputation was good, and he had large accounts, but as this expansion began overtaking other corporations, purchasing them, or incorporating other corporations for various ends of the business—and I am not going into detail with that except Alpine Dairy only—Taylor was the adviser of Forster on whether to form a corporation—I can prepare a note—you don't need a lawyer—I can incorporate them myself—and did—and advised him as to the financial end of it, and as time went on, Forster's and Taylor's relationship was simply this: that as far as Forster was concerned, he paid no attention to the books and bookkeeping at all, and wouldn't have known anything about it if he had. He depended entirely upon Taylor, and his professional ability in everything that he did, and in every investment that he made, and Taylor was the secretary-treasurer of practically every corporation that Forster had with the duty of keeping the accounts, credit, and keeping the [46] minutes, and as we reach a stage later, I will tell you now that for a period of ten years, we find that as secretary, he didn't keep a single minute of the books for all practical purposes even of the Issaquah Creamery.

Forster was busy on the outside in these enterprises. He never saw an income tax statement except as it was presented to him for signature. Gen-

erally, at the last minute, for the return, and often with Taylor having obtained, as he had a perfect right to do, an extension for filing. He signed his name, Mr. Forster signed his name, and that was all there was to it, and he assumed the returns were correct, and notwithstanding this amount of money due during these years, Forster, who as this evidence shows and as I have told you, landed in Issaquah, and in a situation of washing milk cans, he and his corporation paid the Government of the United States in income tax three hundred seventy-five thousand dollars, and Forster thought, as the evidence will show, that he was paying his income tax, and didn't know that he wasn't—paying that amount of money.

Then, there began and was organized, or, rather, put it this way: the evidence will show that Taylor determined that Alpine Dairy, which had been operated in Seattle as a subsidiary of Issaquah Creamery, should become [47] a separate operation, doubtless for tax purposes. Forster doesn't know. In any event, he had Forster separate Alpine Dairy from Issaquah, and inasmuch as that transaction involved at least one hundred thousand dollars, Taylor employed for Forster a firm of attorneys to do that legal work in that connection. Taylor handled the details.

Alpine Dairy became the personal property of Forster, and out of the corporation but under Taylor's bookkeeping set-up and Alpine Dairy is in Seattle and Issaquah Creamery is in Issaquah.

While the immediate records were kept in Seat-

tle of sales, they all went to the—out to Issaquah to the bookkeeping department there, and I think the evidence will show that there is where the great confusion came.

Checks were issued, not at Alpine, but at Issaquah, and as the thing went on, and the business expanded, unless Taylor advised the bookkeeping department, it wouldn't know whether to charge certain accounts to Issaquah or to Alpine, with credit to Issaquah, or with credit to Alpine, or where. In any event, and I will reach it, there is the muddled bookkeeping shortly.

Forster is simply, all this time, on the outside attending to the business end of the concern [48] and employing what he thinks is a very qualified bookkeeping and auditing organization.

The evidence will show that on occasion, people sought employment in the bookkeeping department. Mr. Forster would send them to Taylor, and Taylor would say, "We don't need any more, we have enough."

During this time, Taylor advertised himself now, not only as a licensed public accountant, but as an adviser, financial adviser and financial consultant, which he was.

He handled the matters of Forster in the purchase of real estate, in the matter of insurance, in the matter of setting up licenses for Forster, and Forster didn't have lawyers. He had Taylor, and the relationship between them was very close, and the evidence will show that you couldn't have convinced Forster during those days that Taylor was

not the best accountant in the State of Washington, and perhaps anywhere outside of Switzerland. He had so much faith and confidence. More than that, on two trips Mr. Forster made to Switzerland, he gave power of attorney to Taylor. That means to act in my stead, and sign my name, and do this and do that.

The evidence will show from the banks that they relied upon Taylor's representations as to Forster's financial situation in making personal loans, [49] and large sums of money to Mr. Forster.

Mr. Taylor introduced Mr. Forster to the investment houses through which Mr. Forster made his investments.

Other businesses are acquired, and some disposed of during these years now from 19—let us say from 1940 to 1950 because with the war, there was the usual expansion of business and trade that brought this little one thousand dollars on a purchase into a three or four million dollar operation.

It may have been too big for Mr. Taylor. That will be a matter for you to determine on the matter of intent. It may have been something else. In any event, in 1950, Mr. Taylor left this vicinity and Mr. Forster was in a situation of getting another auditor, but upon Mr. Taylor's leaving, the evidence will show, the Internal Revenue Department began investigating his accounts. By that, I mean of people for whom he acted as auditor, and the Forster enterprises—we will refer to them as that now, because there were several corporations—being one of the larger accounts and Mr. Forster employed

the firm of Bogle, Bogle and Gates as his attorneys. He didn't know where to turn, and it was realized while Mr. Taylor before leaving had told Mr. Forster that his books and records were in perfect shape, all of these, they should [50] employ a recognized national firm of certified public accountants and the evidence will show they paid that firm over seventy thousand dollars to determine the status of the books, and to ascertain and find out whether and in what amount of income taxes were due the Government of the United States.

This firm went in and found the mess that Mr. Gorans, who personally handled the matter, will testify about on the witness stand. Nothing concealed, mind you, as the evidence will show, but plain and open when you could run it down, but an utter lack of bookkeeping in which there had been no reconciliation over the past—over this whole period involved here between bank accounts and books, the journals or the ledgers, in these various corporations.

There wasn't, the evidence will show, a single financial matter that Mr. Forster had that Taylor didn't have the eminent knowledge of.

Reference is made, and it is a very important matter in this situation, of his bank account 198 referred to by Mr. Moriarty. Mr. Forster had a drawing account with the Issaquah Creamery. Items that should have been charged against him, it developed, were not charged. Mr. Erickson was taking his orders from Taylor on what to do, and how to handle the books, and [51] checks would

come in and they didn't know what to do with them.

I think the evidence will show that Mr. Erickson didn't have the experience as a bookkeeper, as the Government has suggested, and if he didn't know what to do with an item, money or anything, or checks, I think the evidence will show, and this may be said for Mr. Erickson, that it didn't make any difference to him, as he looked at it, whether it went upon the books of the Issaquah Creamery or of Alpine or not, because, as far as he was concerned, it was Hans Forster. Forster was Alpine, an individual doing business as Alpine, and he owned all the stock of the Issaquah Creamery, and it was natural, I think the evidence will show, in the thinking of Erickson, that it didn't make any difference.

So Erickson maintains it was no difference to him whether it was put on this book or that book, but from the income tax standpoint, it is one of the items that makes a tax of three hundred fifty thousand dollars with a fifty percent penalty, with interest.

But, Forster didn't know anything about these things.

For example, Counsel referred to a Cadillac that was purchased. It was. It was purchased or ordered before Mr. Forster went on this trip to Switzerland. It [52] arrived when he was in Switzerland, and after this audit was made, we find it was charged erroneously. Where it should have been charged to his account, it was charged to something else, and he was in Switzerland when it happened,

and didn't have any idea where it was charged or anything about it.

There is one interesting thing on the television. It is the one time, the evidence will show, that Mr. Forster made a statement as to what should be done, and it was made facetiously.

I think Mr. Erickson, or somebody, asked him about the television, and he said he purchased it for his home, and he said, "I think the Creamery ought to pay for it, all the employees are over there looking at it, and I can't get a look at it." Just as facetious as that. But it was charged, as the Government says, from the tax standpoint, erroneously, so that he owes that much tax on that, which becomes tax evasion, if there was an intent to defraud. There was none.

Now, another thing. When this audit was made at this terrific price and the necessary work and setting up an entire new set of books was done, the facts therein were submitted to the Government of the United States and I think our audit will show, perhaps—our auditors will show, perhaps, we owe more taxes than this \$355,000. [53]

* * * * *

Mr. Le Sourd: Counsel for both sides and Ladies and Gentlemen of the Jury:

It is my lot through pattern of circumstances to address you in what is to be considered the poorest time of the day for a speaker, right after lunch, but I believe what I have to say to you will be sufficient to command your attention throughout the whole of my remarks. [61]

Mr. Kenneth Cox, my partner, and myself have the honor to represent Mr. L. Hicks Taylor, a Defendant in these proceedings.

Judge Moriarty and Mr. Griffin have already helped out in shortening my statement by covering some of the background of Mr. Taylor and some of his professional accomplishments.

As they said, Mr. Taylor commenced public accounting practice in downtown Seattle back in 1919 and throughout all of the years up through the years in this case he was a public accountant and of recognized ability and increasing practice. His ability was recognized by his being made president of the Washington Society of Licensed Public Accountants, not only once but twice, once in 1942 and again in 1948. In addition to that Mr. Taylor was elected three different terms as president of the Seattle Society of Public Accountants.

Ladies and Gentlemen, by the time of the years here in question, 1943 to 1948, Mr. Taylor had a large practice in downtown Seattle taking his time and long hours every day and throughout the latter years necessitating several assistants.

Mr. Taylor, as already told to you, began way back about 1930 as an accountant and doing some work [62] for a concern called Issaquah Creamery Company. At that time Mr. Forster was not the owner of that corporation. Mr. Forster shortly afterwards became the owner of that corporation and Mr. Taylor continued with the organization as one of his clients. The corporation's business at that time consisted of processing of milk products

in Issaquah. Mr. Taylor's office, of course, was in Seattle.

Shortly after that time Mr. Forster, as has been mentioned, spread out into the fresh milk business in Seattle and started selling his milk in Seattle under the name of Alpine Dairy.

This business grew and thus after a short number of years by the middle of the thirties there were, in effect, two separate and rapidly growing businesses under this one corporation, one being the Issaquah Creamery processing activities out at Issaquah and the other being the Alpine Dairy fresh milk sales in Seattle.

Now, the books for these activities were kept at Issaquah except for sales records of Alpine Dairy in Seattle which I will get into at length, but the businesses were growing rapidly and soon necessitated far more than the very simple bookkeeping operations which were true in the early [63] 1930's at the time Mr. Forster took over.

At that time, our evidence will show, if the Jury please, that Mr. Taylor—the operation was so small that Mr. Taylor was able and did supervise a great detail of the actual bookkeeping operations, the type of work that Mr. Erickson took on when he came in in the middle 1930's. But it soon outgrew any ability of Mr. Taylor to give it any detailed supervision.

I think you all know where Issaquah is. It is out on the highway to Snoqualmie Pass about ten miles from Seattle. It soon outgrew any ability to check those things from Seattle and Mr. Erickson,

about '36, was brought in as office manager in charge of the books and office staff keeping those books.

From that time on, Ladies and Gentlemen, Mr. Taylor's connection with this business grew more and more remote.

Now, in 19—by 1940 these businesses had grown to be quite large affairs and in 1940 the business was split and the fresh milk business, the Alpine Dairy Business, was taken over by Mr. Forster personally as an individual proprietorship leaving only the Issaquah Creamery processing business in the corporation. [64]

Counsel said that this was on Mr. Taylor's recommendation. I think the evidence—at least some of the evidence—will show that it was on the recommendation of Mr. H. B. Jones, an outstanding attorney in this city.

Prior to that time Mr. Taylor had been receiving for his work with these two businesses one hundred dollars a month. These two businesses are the two businesses really that are involved in this case and on which the Indictment is based.

The Indictment is based on false returns of Hans Forster's personal returns, which included after 1940 the Alpine Dairy business. As I say, prior to 1940 Mr. Taylor had been receiving one hundred dollars a month for his work. When the businesses were split into two separate entities, this naturally increased the work which Mr. Taylor was doing and which I will outline at length to you because it necessitated two sets of ledgers in his office, two

sets of tax returns, two sets of sales tax returns, two sets of business and occupation returns, and so on, all of the other things that go with operating a business and separating a business into two entities. But the evidence will show that Mr. Forster refused to increase Mr. Taylor's compensation and merely split [65] the one hundred dollars, fifty dollars apiece, for these two businesses.

Now, these businesses continued to expand through the early 1940's and through the middle and late 1940's until the years involved in this case, 1945 through 1949, until they were extremely large affairs. Each of these businesses, the evidence will show, had gross sales of three million dollars a year, or more. The gross sales involved thousands of daily entries in the books.

We will produce these books and show them to you during the course of this trial and show you the complicated nature of this transaction and the years involved in this case.

The Alpine Dairy Office in Seattle, which handled the sales of fresh milk and incoming receipts from the sales, had a bookkeeping staff averaging ten to twelve to twenty-five people handling the books under the direction of a Mrs. Wilcox.

Out at Issaquah the sales being of larger units than the fresh milk, the entries were not as great but still necessitated an office force of four people in order to keep the record, the large volume, perhaps one thousand entries a day at Issaquah, in the very voluminous and complicated books. [66]

But Mr. Taylor, Ladies and Gentlemen, was still

getting only fifty dollars a month for each of these corporations and that is what he got throughout the tax years here involved.

Now, what did Mr. Taylor do? What will the evidence show as to what he did for fifty dollars a month?

The main books were kept out at Issaquah. I think it is important, Ladies and Gentlemen, throughout this case, to visualize the physical set up that existed. At Issaquah is an office building ten miles from Seattle and in that office building side by side is an office for Mr. Forster an office for Mr. Erickson and the bookkeeping staff altogether and they were as one unit day in and day out throughout the year with all of these entries coming in, thousands of entries every day, to be placed in these books—cash receipts coming in and checks were written, and all of that going on, hour after hour, day after day, out at that office at Issaquah.

Mr. Taylor was in Seattle. He had a large accounting practice, we will show, with hundreds of clients. He was busy in other affairs. He was getting fifty dollars a month from each of these two corporations. [67]

Now, Alpine Dairy—each of these two businesses.

Alpine Dairy had an office in Seattle down on Rainier Avenue, as I say, with a very large staff of bookkeepers. They were selling fresh milk. Mrs. Wilcox, with this staff of bookkeepers, kept these transactions. All of the checks, however, for expenditures were made out at Issaquah, and Counsel has said she sent her record of receipts, and receipts

only, out to Issaquah; but the expenses were paid by Mr. Forster and Mr. Erickson at Issaquah.

Mrs. Wilcox sent a recap into Mr. Taylor's office in Seattle. Mr. Taylor kept what he calls a general ledger in Seattle.

Where do you get the information for those general ledgers?

Once each month, and mark that, our evidence will show that once each month he went out to Issaquah to get the information out of Issaquah's books.

Now, here, as you will see, are voluminous books, very large, car loads and all of those things. The evidence will show that Mr. Erickson, before Mr. Taylor came out there, had summarized and totaled and balanced these books, making totals and [68] footings in what we will call a cash balancing journal which was more or less the final book of accounts and exactly summarizing the transactions that were entered on these other records.

Each month Mr. Erickson prepared on long adding tapes a list of figures, one after the other, and besides those figures he put account numbers. These figures were the totals of the various expenditures. There would be—Judge Moriarty spoke to you of plant expenses this morning. The plant expenses would be listed in a figure on that tabulation with a number, the account number, indicating that that figure was plant expense.

These were all prepared for Mr. Taylor by Mr. Erickson before Taylor came out to Issaquah. Also Mr. Erickson had made out a slip showing the in-

ventory of Issaquah Creamery for the end of that month.

Mr. Taylor, the evidence will show, went out to Issaquah and was given this adding machine tape and then we will introduce one for you to see, and he took that tape and he checked those figures with the figures in this cash balancing journal to make certain that they were properly reflected and no mistakes had been made and that they were in [69] accordance with the books that had been kept there by Mr. Erickson, and also Mr. Erickson had given account numbers to these on a column that you will see ran up and down in these books.

There were two sets of totals in the books and he checked those totals to see that they agreed. These were the summary figures. They are complicated enough just as summaries but they were the summary figures of thousands of entries each month in the underlying books of original entry which were kept in that office.

Mr. Taylor then took those figures, because he had ascertained that they were in accordance with the totals on the books, and he had balanced them to see that they balanced, and he took them to Seattle and in Seattle he maintained a book of his own for the purpose of maintaining these figures.

He called that book a general ledger, and these figures—this adding machine tape—was spread out and entered in the various appropriate pages of this general ledger.

Now, in addition to that he was getting each month from Mrs. Wilcox at Alpine, here in Seattle,

a summary of the cash receipts of the Alpine [70] Dairy, and that was all entered likewise in these ledgers.

One ledger was kept for Alpine Dairy and one for Issaquah Creamery.

The disbursements of Alpine Dairy were made by Forster and Erickson at Issaquah and he checked those figures up at Issaquah when he was there in the way that I have told you.

This empire, if I may call it that, as it came to be, included a number of other businesses gradually other than Alpine Dairy and the Issaquah Creamery. Mr. Forster had spread out and acquired business after business throughout the late thirties and the forties.

Mr. Griffin's position seems to be in this case, Ladies and Gentlemen, that after your school days and the age of sixteen a person doesn't learn anything. Well, all I can say is that I think the evidence will show that Mr. Forster learned a great deal after leaving school and certainly learned enough of financial and business affairs to successfully acquire many complicated businesses and manage them with all of the financial and banking and other problems that were with it.

Now, on some of these businesses, other [71] businesses, that Mr. Forster acquired the evidence will show that Mr. Taylor likewise was employed as an accountant at almost always the uniform rate of fifty dollars a month each.

These businesses were of various sizes and complexity. Now, the nature of the work which Mr.

Taylor did for these various businesses was substantially the same except in one case—that of Arctic Gardens—where you will see that he practically carried the whole business himself here in Seattle. That is, he had all the bookkeeping as well as the accounting and all of the transactions with the bank, releasing merchandise held in warehouses and all of that, and yet he still got the same amount of fifty dollars a month.

Now, the highest amount that Mr. Taylor ever received was four hundred dollars in one month representing eight separate businesses.

Now, for this fifty dollars a month that he got from each of these businesses he not only kept the ledger but he made out the sales tax returns to the State and the business and occupation tax returns to the State and he made monthly statements for these businesses, monthly statements, and he made out the Federal income tax returns at the end [72] of the year.

We will put on evidence, Ladies and Gentlemen of the Jury, that the amount that he was paid for each of these corporations, fifty dollars a month, was extremely low as pay for the straight accounting work and the hours he put in for on the average standard public accounting fees for fifty dollars a month a public accountant in those years could not devote more than a day or two a month and yet, in addition to doing this work for fifty dollars a month, as Mr. Griffin has told you in this court, Mr. Forster kept calling on him for all sorts of specialized jobs of one kind or another.

He was asked to help on rezoning problems and asked to sit in with Mr. Forster when he was acquiring a business and this and that and the other thing. He was even asked to be an officer and a director of some of these corporations without any extra pay. Oh, no extra pay, but he was asked to do all these things and asked to keep minutes of these corporations, and he did keep minutes of some of these corporations.

Reference was made to one of them where there were no minutes for ten years. We will show that that minute book happened to be in an attorney's office [73] in Seattle all that time. But, no extra pay for all these extra duties whatsoever.

Mr. Griffin called—in several points during his discussion called—Mr. Taylor an auditor.

I want to be sure that you Ladies and Gentlemen of the Jury know what that term means and what its implications are.

An auditor is one who makes an audit of the accounts of a concern. Now, an audit of the accounts of a concern means to go in and to take the invoices and the checks and all of the original records of business and check them through to be sure that the books correctly and truly reflect the affairs, the business transactions, that that business has gone through within the period of time being covered. It involves checking the accounts receivable and the accounts payable and the inventory and all of those things so that the auditor can make a certification to whoever is interested in it, and the owner of the business, and the bank and others, as

to the fact that those books do correctly reflect the financial transactions of that company.

Now, Mr. Taylor, the evidence will show, at no time ever audited these businesses. He was [74] not an auditor. And, if that word is used throughout this trial, as it may very well be, I will expect you Ladies and Gentlemen of the Jury to realize that it is not correct and no audit was ever made by Mr. Taylor.

In fact, you must realize how much such an audit would cost. It isn't done for fifty dollars a month. It involves often a crew of men and in a business like this where each of these two businesses have volumes of three million dollars or more a year, it would involve a tremendous expense.

Mr. Griffin himself said it cost seventy thousand dollars to make an audit for the five years involved in this case and I am certain that no one would expect Mr. Taylor to make an audit for fifty dollars a month.

Now, it is true, Ladies and Gentlemen, that prior to 1936 when Mr. Erickson came into the picture, Mr. Taylor was a lot closer to the books and records at Issaquah than he was later. It was a very little business then with only a few transactions and he was acquainted with the bookkeeping and knew pretty well what was going on. No question has been raised by the Government with regard to those years. It is only later as that business [75] grew to great magnitude and Mr. Taylor continued to get the same amount of pay that the questions involved in this case arise.

Now, in connection with the work that Mr. Taylor was doing for these various companies I call your attention to the fact that with one of them, Arctic Gardens, he was doing, the evidence will show, practically all of the work, the bookkeeping and everything else. Significantly enough, once again the evidence will show that no question was raised by the Government as to that corporation or those books where Mr. Taylor himself had his finger on what was going on.

Another item that the evidence will disclose is that of the Daisy Ice Cream Company. That was owned prior to, I think, 1944 by a man named Morris and was here in Seattle. Mr. Taylor was accountant for Mr. Morris and so far as I know, and I believe the evidence will show, that no question has been raised as to the accuracy and honesty of those books either; but, about 1944, the evidence will show, Mr. Forster acquired that business, the Daisy Ice Cream Company. Mr. Taylor had been doing the accounting for that company and he naturally assumed he would continue since he was doing [76] other work for Mr. Forster and he asked Mr. Forster if he was to continue and Mr. Forster said, "No, no need of your doing this. Mr. Erickson will take care of this at Issaquah." The evidence will show that from that time on Mr. Taylor had no connection with the bookkeeping or accounting of the Daisy Ice Cream Company, and the evidence will also show, Ladies and Gentlemen, that from the time that bookkeeping was moved out to Issaquah under the direction of Forster and

Erickson the cash sales from that time on were never reported and put into income but went into Hans Forster's personal bank account.

Now, Ladies and Gentlemen, Mr. Taylor made out the income tax returns which are here in issue.

Mr. Taylor, as you have seen, secured—he made those—the evidence will show he made those returns out from the information in his ledger which corresponded with the total on the books kept out at Issaquah and corresponded with Mrs. Wilcox's figures for the Alpine here in Seattle.

As to Mrs. Wilcox's figures, another significant thing, Ladies and Gentlemen, the evidence will show there is no doubt of their correctness. It is only as to the transactions handled out at [77] Issaquah that the tax evasion charged here appears.

Now, in making out the return—of these returns—he used the figures from these books and I believe the Revenue Agents will tell you that his returns correctly and accurately reflect the figures on Mr. Taylor's books, correctly and accurately reflect the figures given to him for all of these years.

Now, further than that, since Alpine Dairy was a sole proprietorship, the Alpine Dairy figures appeared on Mr. Forster's personal income tax returns. To make out any personal income tax return, of course, there was the further question of Mr. Forster's outside income, outside of business income appearing on the books. Mr. Taylor made that out too, but he got nothing more than the fifty dollars a month he was paid from Alpine Dairy.

The evidence will show that each year Mr. Taylor

asked Mr. Forster what his outside income was. The evidence will show that Mr. Forster is inclined to be a very close-mouthed individual as to his financial matters. It will show that Mr. Forster each year gave Mr. Taylor figures for this return. He would give him his figure for interest and withholding slips for his salary from Issaquah [78] Creamery and for miscellaneous items of income and he had an account at a brokerage office in Seattle where he bought and sold securities and Mr. Taylor would get directly from those brokers information of that account and all that information went on these returns.

Now, of course, the evidence will show, Mr. Taylor knew that he did not know that those figures were correct. He had made no audit of those figures. He was taking merely what he was given in the way of those figures by Mr. Erickson on those books and by Mr. Forster personally and not having audited or not having verified those figures himself, the returns will show that on each return he filed he very carefully let the Government know that he had no liability for those figures and he put a stamp on every return stating that the return was made out from information furnished him by his client without any verification of the figures that were in there.

Now, not only did Mr. Taylor make that clear on his tax returns but also otherwise. Mr. Griffin has said something to you about the bank relying on Mr. Taylor's financial statement. Ladies and Gentlemen, we will have the officers of the [79] People's

Bank here as witnesses and they will tell you that their files show that every—that not a single financial statement that they ever received had Mr. Taylor's name on it, and almost all of them were signed by Mr. Hans Forster.

Mr. Taylor, not knowing whether cash figures were correct, made out financial statements monthly from the figures given him and sent them in to Mr. Forster. If Mr. Forster wanted to make use of those statements and give them to an outsider, Mr. Forster was going to have to vouch for the accuracy of those figures because Mr. Taylor did not know that they were accurate.

Ladies and Gentlemen, in complicated business transactions of the scope with which we are involved here there are numerous things happening during the course of a year. The Government will, I believe, bring up a number of isolated transactions where they will claim that Mr. Taylor at some time during the year knew that Mr. Forster had received some income on a transaction where it possibly could be construed that he received some income and that the income did not get on his financial returns. Now, as to those isolated transactions, Ladies and Gentlemen, we will show as to [80] some of them that they were extremely ambiguous and difficult insofar as how they were to be reported for income tax purposes. At least one of them I personally wouldn't know today how it should be reported. On others we will show that Mr. Taylor had good reason to believe that the figures given him for the full income of the Alpine

and Issaquah included that income. Those figures were large and complicated, as you must realize.

Now, one of these was the year-end 1949 matter referred to by both Counsel. Mr. Griffin, however, said that in November, 1948, Mr. Taylor went into a huddle with Mr. Erickson and Mr. Forster. Our evidence, if you please, will show that that occurred not in November of 1948 at all but at the end of January, 1949, and that at that time Mr. Taylor made up a work sheet in his own handwriting as was his custom and he has never concealed a thing. Cross counsel says, “. . . on his records and here for the world to behold.” He made up a work sheet showing the income from that business and in his own hands shows income and then he gave it to Mr. Forster and he raised Cain over it and insisted that just could not be and Mr. Taylor said, “That is what the books show. If there is any mistake, you tell me [81] what the mistake is and I will correct the figures.” And he held that work sheet until the last few days before the March 15th deadline and then he was called by Mr. Forster who said Mr. Erickson found some mistake and Mr. Erickson called and said, “Make such and such changes on the work sheet.” And he made those changes in such a way that they are not concealed but are perfectly apparent to any one who examines it and you will have the opportunity to examine it, and the return was filed on that basis.

The evidence will also disclose that Mr. Erickson and Mr. Forster doctored up and falsified the books themselves at Issaquah at the year-end to couple

in the figures that Mr. Erickson gave to Mr. Taylor.

The Government has told you that they frankly admitted to you this morning that they were not sure that Mr. Taylor had knowledge of all these things going on. I believe when the evidence is in you will see that he did not have knowledge of these things. You will see item after item coming into evidence that he did not have knowledge of. You will see that the large evasion consisted of receipts coming into Issaquah which Mr. Forster took and put in his own personal savings account and [82] never put them into Erickson's books where Mr. Taylor could pick them up. Never put them in at all.

Now, I think that the evidence finally will disclose that the only testimony that would indicate that Taylor knew and advised Mr. Forster what to do here is Mr. Forster's own self-serving statements.

In connection with that, Ladies and Gentlemen, let me call this to your attention. The Indictment here charges evasion of tax on more than six hundred thousand dollars of income during these years. In other words, Mr. Forster admittedly—the fact is, Counsel says it was more—Mr. Forster received in these years more than six hundred thousand dollars of income which he did not disclose for income tax purposes. Now, on the contrary, Mr. Taylor was getting fifty dollars a month for hard work for each of these businesses. Now, Mr. Griffin would have you believe in his usual persuasive way that Mr. Taylor did all of this without ever saying

a word to Mr. Forster, without Mr. Forster ever knowing it. Well, I ask you about motive. What motive would a public accountant with a substantial practice in Seattle have for evading [83] tax on six hundred thousand dollars of income for his client for fifty dollars a month? More particularly, Ladies and Gentlemen, without ever even discussing it with his client, which Mr. Griffin would have you believe, and I say, when you examine the testimony of Mr. Forster in this case that you should bear in mind the motive in considering it and bear in mind, and if you find, that when Mr. Forster takes the position that he never knew a thing about this whole thing, if you find that is false then you can realize what Mr. Taylor's position is when he is doing work for a client and that client now comes in and says the blame is on Mr. Taylor.

Now, in connection with the compensation there is one thing I overlooked. In connection with the compensation which Mr. Taylor received, I told you he was receiving about fifty dollars a month from these businesses. The maximum number was eight at four hundred dollars. In addition to that Mr. Taylor received a few dollars on the Washington Athletic Club membership he had and occasionally he received a free quart of ice cream when he went out to Issaquah, but other than that Mr. Taylor received not a penny out of these businesses and these transactions the evidence will [84] disclose.

Now, you may be wondering why, if the facts are as I have outlined them to you, why is it that the Government has included Mr. Taylor in this In-

dictment? We will show, I believe, that the inclusion of Mr. Taylor in this Indictment is the result of a deliberate campaign to make him the scapegoat for Mr. Forster's tax evasion and in proving that, Ladies and Gentlemen, we will submit to you evidence of a series of circumstances which I would like now to summarize for you.

Sometime prior to 1950 the Revenue Agents began an investigation of Mr. Taylor's own personal income tax returns. Mr. Taylor hired an attorney to represent him in that matter and Mr. Taylor checked himself into his returns and he found that there was income omitted and he told the Government that but he took the position that that was during the war years when he was working sixteen to eighteen hours a day and, like the lawyer who dies without a will, he hadn't kept adequate records for himself and he had no intent to evade tax.

The attorney which he hired to represent him sits here today as an attorney for Mr. Forster. It is not Mr. Griffin. [85]

The evidence will show that Mr. Taylor pleaded guilty to tax evasion for one year on his personal return on the advice and assistance—insistence—of that attorney.

The evidence will further show that although that attorney was not representing Mr. Forster when Mr. Taylor had employed him, that prior to his pleading Mr. Taylor guilty of tax evasion that attorney began representing Mr. Forster and his enterprises and that since that time he has been the principal representative of Mr. Forster in all of

these tax matters which have culminated in this trial, Mr. Griffin having been brought in to conduct this trial.

Now, Ladies and Gentlemen, it is not my purpose to re-try Mr. Taylor's own personal tax case. He plead guilty and served his sentence and that is over with, but we will show you Ladies and Gentlemen that a short time after he plead guilty at the recommendation of this attorney, this same attorney was appearing before the Revenue Agents urging that Mr. Taylor was responsible for all of Mr. Forster's tax difficulties and I think we will show you Ladies and Gentlemen that during this same period this same attorney was outwardly, at [86] least, continuing to represent Mr. Taylor. We will show you that during this period he went out to Mr. Taylor's house, Mr. Taylor being in the Federal penal pen, and talked to his wife and gave his wife to understand that he was still **working on** something involving Mr. Taylor's own personal case and went through his personal files and removed papers therefrom. We will show you that when the Revenue Agent demanded possession from this attorney of Mr. Taylor's personal files, Mr. Taylor still being away, that this attorney claimed privilege as Mr. Taylor's attorney for those records even though he was then appearing before the Revenue Agents and insisting that Mr. Forster's troubles should all be blamed on Mr. Taylor.

We will show you Ladies and Gentlemen that he was giving directions to the accountants in Mr. Taylor's office on behalf of Mr. Taylor during this same

period and that when Mr. Forster came back from the penal camp in 1950 this attorney advised Mr. Taylor to take a long vacation, right during the critical period in this investigation and that he did take the vacation and that not until he got back did this attorney tell Mr. Taylor there was a conflict of interest and he could no longer represent Mr. [87] Taylor, and that from that time on he was representing Mr. Forster.

Not only that, Ladies and Gentlemen, we will show you by evidence in this case that the first time that a Revenue Agent talked to Mr. Forster about this case Mr. Forster told that Revenue Agent that this—that if there were any difficulties with his returns—any income that was not reported—it could not be Mr. Taylor's fault because Mr. Taylor merely took the figures which were given to him by Erickson and Forster and put them on the return.

Nevertheless, despite the fact that that is the first thing that Mr. Forster said to the Revenue Agents we find this same attorney later on bringing Mr. Forster to the Revenue Agents to make statements at that time reversing himself and saying, no, that everything he did Mr. Taylor advised him to do, and saying that when he took checks and put them in his personal savings accounts and didn't run them through his books it was Mr. Taylor advised him to do that, and do the other things.

The evidence will show you Ladies and Gentlemen that there has been a deliberate campaign throughout this case to make Mr. Taylor the scape-goat [88] for Mr. Forster's tax evasion. It has been

carried forward almost to the trial of this case by extensive newspaper publicity which we will also show you.

We feel that when you see all that evidence you will realize what has been going on in this case.

In summary, Ladies and Gentlemen, we expect to prove that the income on which the tax was not paid here was not Taylor's income. He got no financial benefit from this tax evasion, that he was paid only low fees for the work he actually did and we will put on witnesses to show that to you; that he took the figures given him without question and that he wasn't paid—and on that I omitted to say that at various times our evidence will show Mr. Taylor was dissatisfied with this situation and he was taking figures and not receiving enough to warrant him checking or questioning those figures and he brought the matter up with Mr. Forster, and he said, "You don't pay me enough to get into these things and check them." And Mr. Forster said, "No, you are being paid too much already." He took those. He was not being paid to question or check. He was paid merely to do what he was doing and he did what he was [89] doing accurately and completely and those returns as filed accurately reflected the books and he warned the Government he was taking no responsibility by stamping those returns, "Prepared without verification," and he was careful he made no representation to anyone else as to the accuracy for those figures and finally we expect to show you that his inclusion—Mr. Taylor's inclusion—in this case, we think, is the natural

result because we will show you that the Government's decision to prosecute Mr. Taylor was not until after all the representations were made by this attorney who was representing Mr. Forster and purporting to represent Mr. Taylor at the same time, and we will show you that the Government's decision to prosecute wasn't made until after that time and we think there was little else that the Government could do but to include Mr. Taylor in this case under those circumstances. [90]

* * * * *

Mr. Keesling: The whole defense of Mr. Erickson is based on the accounts that he carried out were wilful and knowingly—were done wilfully and knowingly. We don't deny much of the evidence in this case. As a matter of fact, Mr. Erickson prepared for the Government some of the evidence that will be submitted to you.

He has concealed nothing. But, he does maintain that at no time did he wilfully attempt to defeat the tax statute, and that word "wilful" isn't just merely background, and just words. [95]

* * * * *

The Court: Ladies and Gentlemen of the Jury:

That completes the opening statements of Counsel in this case.

Before we recess, I think the Court should advise you as to all opening statements made on behalf of the Government and all Defendants, that the purpose of an opening statement is to outline the theory of the case that the particular Plaintiff

or particular Defendant proposes to take in the case.

Likewise, they outline the evidence as they believe it [105] will be established or as it will be brought out in the course of the trial.

Occasionally opening statements may border on argument and that isn't intentional but it is sometimes difficult for a lawyer to limit himself to a statement of his theory and proof without going into argument, but the caution I want to give you at this time is this: That you are not to consider opening statements as evidence of any kind but merely as being helpful to your understanding of the evidence as it comes in and, of course, the proof as it is brought out in the course of testimony and through exhibits constitutes the evidence which you will consider finally in determining the guilt or innocence of these defendants.

Now, when we recess in a few minutes we will recess until Tuesday morning at nine-forty-five. You should be here about nine-thirty Tuesday morning. The recess will be long. That is, it is three days. You must carefully bear in mind throughout, and throughout the time you are sitting in this case, that you can not discuss with anyone any of the issues relating to this case. You should not. You are not permitted to form opinions or express opinions in regard to the merits of this case [106] until it is finally submitted to you for your verdict. There may be occasions when someone will inquire as to the nature of your jury duty and, if so, you should advise them that you are in-

structed by the Court not to disclose or discuss any phase of it and you would appreciate it if they do not do it any further and indicate to them it is something you cannot discuss with them, regardless of whether it is your family or friends or anyone else. [107]

* * * * *

Mr. Griffin: If the Court please, yes.

For the purpose of perfecting this record the Defendant Forster moves at this time for a mistrial based upon the opening statement of Counsel for Mr. Taylor in the attack upon one of counsel for the Defendant Forster, a matter, as we view it—even assuming the truth of any statement made—to be utterly immaterial to the trial of this issue, the issue before the Court here, and so prejudicial to the Defendant that it required the withdrawal. We do not see how the claimed evidence would be admissible and I make that motion now because we may reach a stage in this case where in ruling upon evidence, if they attempt to support it or attempt to offer it, it will not be admissible; and, if they don't, then they have created that beginning prejudice in the minds of the Jury so far as the Defendant Forster is concerned.

The Court: Do you wish to be heard, Mr. Le Sourd? [114]

Mr. Le Sourd: Do you wish to hear from me, your Honor?

The Court: I might hear from you briefly.

Mr. Le Sourd: Yes.

The Court: I take it you are urging that motion

at this time, Mr. Griffin, and asking the Court's ruling on it?

Mr. Griffin: Yes, your Honor.

Mr. Le Sourd: If your Honor please, the evidence outlined is clearly admissible in this case and relevant.

It goes to show, first, that there was an attempt, a continuing attempt, here consciously to place the blame for these transactions on Mr. Taylor, continuing throughout this case from a very early date. It goes to show that as a result—that the result of that attempt—necessarily we will show—found its way into the recommendations and into the documents which the Revenue Agents submitted and on which the decision to include Mr. Taylor in this case was based. It will go further, we believe, to Mr. Forster's credibility in his statements made to the Agents, and which I think will be repeated at this trial, that Mr. Taylor knew of [115] this and Mr. Taylor knew of that other fact. It will go further to, in effect, show that Mr. Taylor was deprived of representation by counsel during a crucial six months period in the early investigation. We will show that Mr. Taylor during this period had implicit reliance on Mr. Kachlein, that he felt Mr. Kachlein was representing his interests, and that had he known that that was not so, he could then have employed other counsel during the crucial period of the investigation.

Mr. Moriarty: The Government also opposes the motion on the ground that during the time of the opening statement there was no objection by coun-

sel; and on the further ground that the defendants in this case could have presented this matter at any time in claim against trial.

The opinion of the Government as to whether admissible or non-admissible: The opening statement is not evidence and can be governed by the Court's instructions.

The Court: The Court will not rule on the matter at this time.

I will ask Counsel for Mr. Forster, assuming they are urging this motion seriously, that they support it with such authorities as they may [116] find on the matter; and, likewise, the question may be of some moment when evidence is introduced, or sought to be introduced, and I would ask Mr. LeSourd to submit any authority you may have on that question; and likewise the Government.

The Court will reserve ruling and we will proceed.

I think that authority should be submitted as soon as it can be done reasonably without fixing any time at this point.

If there is nothing further we will call the Jury and the record will show that the Court will reserve ruling on the motion at this time. [117]

* * * * *

The Court: Gentlemen, before we call the jury, in regard to the motion for mistrial made by Mr. Griffin on behalf of Mr. Forster, I have received no memorandum so I assume there is no thought to filing any at this time, so the Court will rule on the motion and will deny the motion as made.

The Court believes that the admonition given the jury upon conclusion of the opening statements sufficiently cautioned them as to the purpose and consideration to be given the opening statements of counsel.

There was no objection made at the time the opening statement was made and, therefore, the Court feels that the motion should be denied.

Now, in making this ruling I don't indicate that the evidence of matters covered therein may necessarily be admissible or material; and if counsel propose to bring out evidence such as was outlined and such as was made the basis of the motion—if offered and brought out and objection made to it, the Court would consider the objection as made, and any authority you may wish to present in advance may be considered. [130-D]

Mr. Le Sourd: Very well, your Honor, I will be happy to present to the Court in advance of that a memorandum of what we expect to prove and the materiality.

The Court: And any authority to sustain it.

Mr. Le Sourd: Yes.

Mr. Griffin: May we have an exception to the Court's ruling?

The Court: Yes, the record may so show.

Mr. Griffin: Upon the fact that no objection was made at the time, upon the basis that counsel may make a statement of what he intends to prove, I don't object to that. I am not arguing with the Court at all but just preserving the record.

The Court: That may be. I don't believe there is anything the Court could do at this time, anything that would remedy the error if there should be error, the Court having given the admonition to the jury, and to go into it would only, at this time, aggravate any error there may be.

Mr. Moriarty: Do I understand that Mr. Le Sourd will present some authority as to the stand of what he intends to prove?

The Court: I gather he might submit [130-E] a memorandum covering matters he proposes to bring out and the purpose and some authority.

Mr. Le Sourd: Well——

The Court: (Interposing) And some indication as to its materiality.

Mr. Le Sourd: Not necessarily legal authority, your Honor, as to materiality and relevancy—the matters themselves rather than legal decisions; but what I said was that I would be glad, if the Court desires, that prior to the time when it may be necessary for me to proffer such evidence as a part of my case in chief, I would be happy in advance to submit a memorandum outlining what I expect to prove and stating why I think it is material and relevant.

The Court: If you have authority, fine, and if you haven't I can understand there may not be authority on that or something of that character; does that cover it, Mr. Moriarty?

Mr. Moriarty: Yes.

The Court: You may call the jury.

(Whereupon, the jury was returned to the court room and testimony and other evidence was offered and received for and on behalf of the Plaintiff.) [130-F]

* * * * *

SAM GREEN

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: I want your full name and the spelling of your name, please.

The Witness: Sam Green, G-r-e-e-n (spelling).

Q. (By Mr. Patten): Mr. Green, would you repeat your full name for the record, please?

A. Sam Green.

Q. And where do you live, sir?

A. 13002 Sixth Avenue Northwest, Seattle.

Q. And what is your business, sir?

A. Oil business.

Q. Presently connected with the oil business, sir?

A. Yes, sir.

Q. And what company is that?

A. Time Oil Company.

Q. And how long have you been connected with the Time Oil Company, Mr. Green?

A. About 22 years.

Q. All right; what is your present position [135] with the Time Oil?

A. Vice-president.

Q. Referring specifically to the years 1945 to 1949, what was your position with the company?

(Testimony of Sam Green.)

A. Vice-president.

Q. In charge of that department?

A. Sales.

Q. Do you know the defendant in these proceedings, Mr. Forster? A. I do.

Q. How long have you known him, sir?

A. About 12 or 13 years.

Q. Does the Time Oil Company—
Mr. Patten: Strike that question.

Q. (By Mr. Patten continuing): Did you sell Mr. Forster or his enterprises any oil during the years 1945 to 1949? A. Yes.

Q. By Oils, we mean gasoline, too?

A. Yes.

Q. Was that a retail account, or a wholesale account? A. Wholesale account.

Q. In what lots did you sell gasoline? [136]

A. What his requirements were, truck deliveries and truck and trailer deliveries and fuel oil.

Q. You sold him in carload lots, did you, at carload prices, or what prices? The wholesale price or the general pump price?

A. It was a discount below wholesale.

Q. Now, in addition to the wholesale price, did the Time Oil Company during the years 1945 to 1949 give a certain discount? A. Yes.

Q. To all customers, or to certain customers?

A. To some customers.

Q. To some customers, and how was the amount of that discount computed, sir?

A. Based on purchases.

(Testimony of Sam Green.)

Q. Now, you mentioned you sold gasoline to Mr. Hans Forster. Which of his enterprises did you sell gasoline to?

A. Alpine Dairy on gasoline; Issaquah Dairy in Issaquah, fuel oil.

Q. Fuel oil; and was Alpine Dairy and Issaquah Creamery one of the customers who received the special discounts?

A. Alpine Dairy received the discount.

Q. Issaquash did not? [137]

A. I didn't handle that account personally, and so I can't recall.

Q. Now, how were these discounts paid, sir?

Maybe I will break that down.

How frequently were the discounts paid, sir?

A. They would be paid the following month for the previous month's purchases.

Q. And in what form would they be paid, during the years 1945 to 1949?

I refer to that, by check or by discount on next month's bill, or by what other means?

A. I believe it was paid by cash.

Q. By "cash", do you mean currency, sir?

A. Currency, correct.

Mr. Patten: I ask that this group of 12 documents be marked for identification as Plaintiff's exhibits next in order.

The Clerk: Plaintiff's Exhibit 170 marked for identification.

(Plaintiff's Exhibit 170 marked for identification.)

(Testimony of Sam Green.)

Q. (By Mr. Patten): Mr. Green, you are being handed a group of documents which have been marked for identification as Exhibit 170. I wonder if you would examine those? I wonder if you can examine those, please, sir? [138]

A. I do identify them.

Q. Just very briefly state what they are, sir.

A. Well, the first one would be a payment of——

Q. (Interposing) Maybe I can simplify this. Are they receipts for funds which you delivered to Mr. Forster, or his enterprises?

A. Well, either others may have delivered these, or I may have delivered some.

Mr. Le Sourd: I couldn't get that answer.

The Court: Mr. Reporter, read the answer.

(Whereupon, preceding answer was read by the Reporter.)

Mr. Le Sourd: Thank you.

Q. (By Mr. Patten): Do you recognize them to be records of the Time Oil Company?

A. Not all of them. The first one, for example, recites an amount of money, \$222.30, and signed by Hans Forster, but it doesn't say who from.

The next one does have received from Sam Green, a certain amount of money.

The third one does say, "Received of Time Oil Company," signed "Hans Forster".

Q. You have seen those previously, have you not, sir? [139]

A. Yes, I have.

Q. Do you know where they came from?

(Testimony of Sam Green.)

A. Yes.

Q. Was it from your company?

A. They came from our company.

Mr. Patten: I would like to offer Exhibit 170 in evidence.

(Whereupon, there was a brief pause.)

Mr. Griffin: May I inquire for a moment?

Mr. Patten: Yes.

Mr. Griffin: You say these are the original files of Time Oil Company?

The Witness: Just slips of paper.

Mr. Griffin: My question was: These are part of the original files are they, of Time Oil Company?

The Witness: Yes.

Mr. Griffin: Is this the way Time Oil Company keeps its files?

The Witness: It isn't the file.

Mr. Griffin: What is it?

The Witness: As I mentioned, they are just slips of paper indicating receipts.

Mr. Griffin: But they are part of the records and methods of keeping receipts at Time Oil Company, are they, in the usual course of business?

The Witness: They are just as you see what it is.

Mr. Griffin: May the question be read, your Honor?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

The Witness: I think so.

Mr. Griffin: I haven't any objection.

(Testimony of Sam Green.)

(Whereupon, there was a brief pause.)

Mr. Le Sourd: We have no objection.

(Whereupon, there was a brief pause.)

Mr. Keesling: No objection.

The Court: Exhibit 170 for identification may be admitted.

(Plaintiff's Exhibit 170 admitted in evidence.)

Q. (By Mr. Patten): These refer to the year 1946, do they not, Mr. Green, except that one which would be the prior month? A. Yes.

Q. Did you deliver some of this currency?

A. Yes.

Q. And the cash—in the cash, and certain others of these you did not deliver, sir?

A. Yes. [141]

Q. Do you know who would have delivered it?

A. No.

Q. And you obtained a receipt, or a note from the person who accepted the currency?

A. Yes.

Q. And these are the receipts or notations which you obtained from the person to whom the currency was delivered? A. That is right.

Q. Do you know how much currency was delivered to Issaquah Creamery or Alpine Dairy, or employees of those organizations, during the year 1946?

A. It would be indicated on those receipts.

Q. These receipts would establish that amount?

A. I think so.

Q. Now, then, I see the second receipt here is

(Testimony of Sam Green.)

signed by—is in the amount of \$396.80 and is signed by H. Bezeau. Can you tell us who Mr. Bezeau is?

A. I believe he is an employee of Alpine Dairy.

Q. Yes, sir; and that would mean the money was delivered to Mr. Bezeau?

Mr. Griffin: Objected to as leading.

The Court: Objection sustained. [142]

Q. (By Mr. Patten continuing): Would the—you or an employee of the Oil Company obtain a receipt when the delivery of currency was made, sir? Or some notation? A. I believe so.

Mr. Griffin: If the Court please, I thought the witness identified these as being the transactions and they are in evidence.

The Court: I think the question was already answered, Mr. Griffin.

Q. (By Mr. Patten): And it was obtained from the person to whom it was delivered?

A. It should have been.

Q. Were these receipts deducted on the books of your company, taken away from the sales price?

Mr. Griffin: If he knows.

Q. (By Mr. Patten continuing): If you know, sir.

Mr. Griffin: And it is immaterial at this stage.

The Court: I presume—I don't know what the materiality is. If Counsel represents it as being material——

Mr. Patten: I was interested in whether these—in establishing whether he knew they were in [143] the nature of a gift or whether they were an ordinary

(Testimony of Sam Green.)

business transaction which they computed in arriving at their sales.

Mr. Griffin: First, it is immaterial, and if he answers that question, I want to know what he had to do with the books, whether he is competent to answer.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. I wouldn't know.

Mr. Patten: That is the answer.

I ask that these documents be marked for identification as Plaintiff's Exhibit 170.

The Clerk: Plaintiff's Exhibit 171 marked for identification.

(Plaintiff's Exhibit 171 marked for identification.)

Mr. Patten: 171.

Q. Did you personally ever deliver currency to the Issaquah Creamery or the Alpine Dairy without obtaining the receipt or some notation?

A. No.

Q. Handing you a group of documents marked for [144] identification as Plaintiff's Exhibit 171, I will ask you if you will identify those, please, sir?

A. I have identified them.

Q. Those are records of your company, are they, sir? A. Yes.

Mr. Patten: I would like to offer Exhibit 171 in evidence.

(Whereupon, there was a brief pause.)

(Testimony of Sam Green.)

Mr. Griffin: No objection.

Mr. Le Sourd: No objection.

Mr. Keesling: No objection.

The Court: Exhibit 171 for identification may be admitted.

(Plaintiff's Exhibit No. 171 admitted in evidence.)

Q. (By Mr. Patten): Referring to these, Mr.—exhibit 171, are those—could you tell us what those are, please, sir?

Mr. Griffin: We will stipulate they are all discount checks for receipts of oil or, rather, gasoline.

Mr. Patten: You stipulate they were paid to Mr. Forster or employees of his in the form of currency?

Mr. Griffin: I will so stipulate. [145]

Mr. Patten: And that these exhibits correctly reflect the amounts of these payments?

Mr. Griffin: We so stipulate.

Mr. Patten: We accept the stipulation.

The Court: You accept the stipulation?

Mr. Patten: Yes.

The Court: The record may show the stipulation.

Q. (By Mr. Patten): I notice a number of these are signed by a Mr. Ribary. Do you know who Mr. Ribary is? A. Yes, I do.

Mr. Patten: Will you further stipulate that the signatures appearing on the documents are the signatures of the people they purport to be?

Mr. Griffin: Yes, sir.

The Court: The record may so show.

(Testimony of Sam Green.)

Mr. Patten: We accept the stipulation. Will you stipulate further these are for the year 1947?

Mr. Griffin: There is one there, I think, 1948.

Mr. Patten: It relates to the prior month.

Mr. Griffin: We so stipulate.

The Court: The record may so show.

Mr. Patten: I ask that this group of 14 [146] slips of paper be marked Government's Exhibit next in order.

The Clerk: Plaintiff's Exhibit 172 marked for identification.

(Plaintiff's Exhibit 172 marked for identification.)

Mr. Patten: Perhaps Counsel will be willing to stipulate that Exhibit 172 is a similar group of documents?

Mr. Griffin: For the year 1948, are they?

Mr. Patten: For the year 1948.

Mr. Griffin: So stipulate to the full extent of the stipulation as 171.

Mr. Patten: And that these documents represent the delivery of currency to the firms Issaquah Creamery and Alpine Dairy?

Mr. Griffin: Certainly, that is incorporated in the stipulation of 171.

Mr. Patten: We accept the stipulation.

Mr. Le Sourd: We have no objection to the stipulation.

Mr. Patten: I ask that this group of 13 slips of paper relating to the calendar year 1949 be marked

(Testimony of Sam Green.)

for identification as Government's Exhibit next in order. [147]

The Clerk: Plaintiff's Exhibit No. 173 marked for identification.

(Plaintiff's Exhibit No. 173 marked for identification.)

Mr. Keesling: No objection.

The Court: All right, the stipulation as stated by Mr. Griffin may show in the record as having been accepted and agreeable to all defendants and Exhibit No. 172 is admitted.

(Plaintiff's Exhibit No. 172 admitted in evidence.)

Mr. Patten: Your stipulation, I assume, will extend to 170, also?

Mr. Griffin: It was proven without objection. I don't know why I should stipulate.

Mr. Patten: I may have overlooked something. Will you extend your stipulation to Exhibit 173, which are a group of documents relating to the calendar year 1949?

Mr. Griffin: We will so stipulate.

Mr. Patten: I ask permission to pass these to the jury. We have about four groups of them. They all serve the same purpose of illustrating. I think we can split them up and pass them quickly.

The Court: Mr. Bailiff, Mr. Somervel, one to [148] one side and one row, and the others to the other side and rows.

(Whereupon, exhibits were shown to the Jurors.)

(Testimony of Sam Green.)

Mr. Le Sourd: The proposed stipulation is satisfactory.

Mr. Griffin: No objection.

The Court: All right, the stipulation as entered into and announced by Mr. Griffin, and accepted as to 171 may be applicable to 173 and Exhibit 173 is admitted.

(Plaintiff's Exhibit No. 173 admitted in evidence.)

* * * * *

CAROLINE NUEKIRCHEN

upon being called as a witness for and on behalf of the Plaintiff and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: I want your full name and the spelling of your name, please.

The Witness: Caroline Neukirchen, N-e-u-k-i-r-c-h-e-n (spelling).

Q. (By Mr. Obenour): Will you state your name, please? A. Caroline Neukirchen.

Q. Where do you live, Miss Neukirchen?

A. Issaquah.

Q. And where are you employed?

A. Darigold Farms, Issaquah.

Q. And how long have you been there employed?

A. I have been in their employ since June of 1952.

Q. And before that, where were you employed?

A. Issaquah Creamery.

Q. Is that the same organization that has since

(Testimony of Caroline Nuekirchen.)

been taken over by Consolidated, now known as Darigold Farms? A. Yes. [240]

Q. And when were you first employed by Issaquah Creamery? A. In February, 1933.

Q. Pardon? A. February of 1933.

Q. And are you also the person that has been referred to as "Kelly" that works at the office there? A. Yes.

Q. Where did you graduate from high school, Miss Neukirchen?

A. Graduated in 1932 from the Issaquah High School.

Q. Did you take any bookkeeping there?

A. One year of bookkeeping.

Q. And you went to work how long after that for Issaquah Creamery?

A. I started in in 1933.

Q. And was your sister employed there at that time or prior to that time? A. Yes, sir.

Q. And her name was what, please?

A. Alice Neukirchen.

Q. Who owned Issaquah at the time you were first employed there; Issaquah Creamery?

A. Mr. Forster, I believe. * * * * * [241]

Q. By 1944, or 1943 and 1944, what were your duties?

A. I was a billing—I am a billing clerk and most of the invoicing, and answer the telephone and take orders and take out the order sheets and take the orders out to the plant and see that they get out on the trucks.

(Testimony of Caroline Nuekirchen.)

Q. Did you have anything to do with the maintenance of accounts receivable ledger?

A. Yes, sir.

Q. Did you have anything to do with the maintaining of records maintaining to quotas that were set during the war?

A. Yes, sir.

* * * * * [243]

Q. (By Mr. Obenour): Who instructed you not to enter any items in the cost analysis sheet?

A. I received instructions from Mr. Forster on one occasion that I can remember of.

Q. What was that occasion?

A. On ice cream sales.

Q. Did you receive any other instructions on items not to post to that cash analysis sheet?

A. Yes, I received instructions on a mix account.

Q. From whom did you receive that instruction?

A. Mr. Forster.

Q. What mix account was that?

A. Renton Ice Cream.

Q. Did you receive any other instructions not to post items received on your cost analysis sheet?

A. On this—on this sheet here, sir?

Q. Yes.

A. No, that is the only one I can recall, sir.

Q. What year did you receive the instructions from Mr. Forster concerning the mix account of Renton Ice and Ice Cream sales?

A. I don't remember; it was during the war, sir.

Mr. Obenour: I ask that that be marked, please.

(Testimony of Caroline Nuekirchen.)

The Clerk: Plaintiff's Exhibit 245 marked for identification.

(Plaintiff's Exhibit No. 245 marked for identification.)

Q. (By Mr. Obenour): Do you remember having accounts receivable cards for Walter Ely?

A. Yes.

Q. Walter Ely Company?

A. Yes, I believe I do remember some.

Q. Clock and Company? A. Yes.

Q. R. L. Stephenson? A. Yes.

Q. You had accounts receivable for all three of those?

A. To the best of my knowledge, I do believe I had a card, yes.

Q. And do you know what the sales to any of those three companies would have been?

A. No, I can't remember.

Q. How did——

A. (Interposing): Pardon me.

The Court: Do you have something to add?

The Witness: I don't know whether I quite understood his question.

Q. (By Mr. Obenour): What products would be sold by you to Walter Ely, Clock and Company, or R. L. Stephenson by the Issaquah Creamery?

A. To the best of my knowledge, it would be butter.

Q. Do you have a column in that book for butter sales? A. Yes, sir.

(Testimony of Caroline Nuekirchen.)

Q. And did you have an accounts receivable for butter sales to all of these three?

A. Did I have a ledger card for them? To the best of my knowledge, I did have a card for them.

Q. Did you receive instructions then from anyone as to why checks received from any of these three companies for the sale of butter to them would not be posted to your cost analysis sheet and handled as income to Issaquah Creamery?

Mr. Griffin: Object to the form of that question.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): What would you do with the [255] checks that you would receive and post on the cost analysis sheets?

A. What would I do with the checks received? They would go into the cash drawer for deposit.

Q. Pardon?

A. They would go into the cash drawer for deposit.

Q. Deposit where? A. In the bank.

Q. What bank?

A. Well, formerly known as the Issaquah State Bank, and then I believe it was changed over to the Washington State Bank.

Q. Did you make out deposit slips for any of those deposits?

A. I may have, but I was not the usual one to make out the deposits.

Q. Have you done it?

A. Yes, I have done it.

(Testimony of Caroline Nuekirchen.)

Q. And to what account would that money, entered from the cash drawer, be deposited?

A. To the Issaquah Creamery Company, to the best of my knowledge, sir.

Q. Did you also have a card for the Casein Company of America, an accounts receivable card?

A. I don't recall, sir.

Q. Handing you what has been marked for identification as Plaintiff's Exhibit 245, can you identify that, please?

A. No, I cannot identify it.

Q. You cannot identify it?

A. Not this. To the best of my knowledge, I cannot.

Mr. Obenour: Give me 235, please.

The Clerk: 235?

Mr. Obenour: Yes.

(Whereupon, Exhibit 235 was handed to Mr. Obenour by the Clerk.)

Q. (By Mr. Obenour): Did you state you were also a billing clerk? A. Yes, sir.

Q. And what would your duties as billing clerk be?

A. Making out invoices for orders received.

Q. Pardon?

A. Making out invoices for orders received.

Q. Would they show the amount that was receivable then for your company from whomever purchased the articles? A. Yes. [257]

The Court: What was your answer?

The Witness: "Yes."

(Testimony of Caroline Nuekirchen.)

Q. (By Mr. Obenour): Handing you what has been marked, identified as 235, and identified as checks of Walter Ely Company, Clock and Company and R. L. Stephenson for the sale of butter by Issaquah Creamery to those respective companies, I will ask you to examine those three checks and can you identify them?

Mr. Griffin: I don't understand the question, if the Court please. The checks are in evidence. There is no matter of identification.

The Court: Are you asking whether she ever saw them before?

Mr. Obenour: Yes, sir.

The Court: That is the question?

Mr. Obenour: Yes, sir.

The Court: The question is: Have you ever seen those before?

The Witness: I wouldn't know, sir.

Q. (By Mr. Obenour continuing): Pardon?

A. I wouldn't know whether I had seen those particular checks before.

Q. Can you determine from the endorsement?

A. It says "Pay to the order of the Issaquah State Bank, Issaquah, Washington, Issaquah Creamery Company, Alpine Dairy Products and Hans Forster," but I wouldn't necessarily have been the one to receive them.

Q. Can you tell whether any of these checks have been handled by you as posted on the sheets and on the accounts receivable cards of these three companies?

(Testimony of Caroline Nuekirchen.)

A. I wouldn't know, sir, unless I had the invoices to prove it.

Q. Would there be any reason why these checks, having been received in your office in the normal course of business, would not have been posted by you upon the sales analysis sheets and respective accounts receivable cards kept by you?

A. That is a long question. Would you repeat it, please?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. (Continuing): Unless I never actually received the check myself, I wouldn't know anything about it.

Q. (By Mr. Obenour): Were those in your duties to so do those [259] things, maintain the cost of the sales analysis sheet and the accounts receivable cards?

Mr. Griffin: Objected to as cross-examination of his own witness.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Would there be any reason why you would have to ask in what manner to handle a sale of butter, of money received from the sale of butter?

A. I can't recall, sir, that there would be any reason.

Q. Pardon?

A. I can't recall that there would be any reason to inquire if I had the invoice for it.

(Testimony of Caroline Nuekirchen.)

Q. That would be the normal system of your books that you described; would that be an account that would be handled under the normal system of accounts that you have described and for the System Sales Sheets and accounts receivable?

A. Yes.

Q. Did you have a Consolidated Dairy Products accounts receivable card?

A. I may have; I do not recall.

Q. And do you ever remember receiving checks [260] for the sale of casein?

A. Yes, I can remember receiving some.

Q. When was that?

A. What year, I could not say.

Q. What did you do with those checks?

Mr. Griffin: Objected to as immaterial, and incompetent, if the Court please, unless it is within the period of the Indictment.

The Court: Well, the—apart from that, it seems to me that the question here is, the answer is, very general, and I certainly——

Mr. Obenour (Interposing): Yes, sir.

Q. (By Mr. Obenour): In the normal course of your duties and performance of your duties as set forth there, how would a check received for the sale of casein be handled by you?

A. I would have — we have no casein column here. I would have had to write it in, or else put it in the miscellaneous column.

Q. And to what account receivable card did you make entry then?

(Testimony of Caroline Nuekirchen.)

A. To whichever account it was invoiced to.

Q. Do you ever remember receiving checks for the sale of Plastic Cream? [261]

A. I cannot remember any such.

Q. Do you ever remember receiving checks for the sale of corn sugar?

A. Corn sugar? If I did, I don't remember, sir.

Q. Were there accounts set up for that; either corn sugar or Plastic Cream on your sales analysis sheets?

A. Not to my knowledge, sir, unless it was put in the miscellaneous column.

Q. Would that be the manner you would handle such a sale?

A. It could very possibly be.

Q. In what account? A. In miscellaneous.

Q. Have you ever had—do you have an account receivable card from Amalgamated Sugar or Holly Sugar? A. No, I don't, sir.

Q. Do you have a column there, I believe, for freight?

A. Yes, I see one here for freight.

Q. Do you remember receiving checks from Holly Sugar or Amalgamated Sugar for freight performed by Issaquah Creamery?

A. No, I do not.

Q. Pardon? [262]

A. I do not remember that I received any.

Q. And how would such a transaction be handled under your system?

(Testimony of Caroline Nuekirchen.)

Mr. Griffin: Objected to as improper, inasmuch as she has no recollection.

The Court: She stated she had no recollection of anything she may have done, had she received it. It doesn't seem to be material.

Q. (By Mr. Obenour): For what purpose was the freight column included in your sales analysis sheet?

A. I don't recall right offhand, sir, but I can remember making invoices out where we prepaid the freight and marked it on the invoice, and the customer in turn would pay the freight charges back to us, prepaid, without having to bother paying for it on the other end, but they still wanted to pay for the freight so I showed it on the invoice.

Q. And how would that transaction be handled?

A. I don't know quite what you mean.

Q. How would you handle the receipt of such a check?

A. Of that freight part of it?

Q. Yes.

A. I would put it under this freight column.

Q. Did you ever prepay the freight for anything [263] purchased by Issaquah Creamery?

A. Did I ever prepay?

Q. Did Issaquah Creamery ever prepay any freight for which it would send billings?

A. The only thing that I can remember is that we shipped out our mix freight prepaid.

That was figured right in the price of the mix,

(Testimony of Caroline Nuekirchen.)

so apparently it was shipped out prepaid. The freight was prepaid.

Q. Did you ever receive checks for any freezers, ice cream freezers, sold by Issaquah Creamery?

A. I don't recall, sir.

Q. Did you have any provision for taking care of any other items that might be sold by Issaquah Creamery other than the normal ones transacted for which there are columns?

A. There possibly could have been.

Q. Would that be under the miscellaneous column? A. It could be.

Q. Do you recall maintaining records for overruns of ice cream, starting from 1943?

Mr. Griffin: Objected to as incompetent, irrelevant and immaterial, and without the period. [264]

The Court: Objected to—I mean, the ruling to that objection is it will be overruled. I think before she may——

Mr. Griffin (Interposing): It assumes something.

The Court: Yes, on that ground, I think the question is objectionable.

Q. (By Mr. Obenour continuing): Did you ever, in your duties maintain records of the production of ice cream and ice cream mix made by Issaquah Creamery? A. The production of?

Q. Yes. A. No, sir.

Q. Did you keep records of the ice cream and ice cream mix sold to your customers?

A. Yes.

(Testimony of Caroline Nuekirchen.)

Q. Would you keep records of the quantities sold to them? A. Yes.

Q. For what purpose did you keep track of the quantities sold to your customers?

A. Because during the war period, there was a quota.

Q. What was that quota? [265]

A. It would be different every month, a certain percentage.

Q. That would be a percentage of what?

A. Of the mix that they had purchased in the base period.

Q. From whom would you get that information?

A. Mr. Erickson.

The Court: Mr. Whom?

The Witness: Mr. Erickson.

Q. (By Mr. Obenour): For what reason would you be given this information pertaining to the quotas by Mr. Erickson?

A. That was an order from the War Food Administration.

Q. For what; order for what? Pardon me, what was the order from the War Food Administration?

A. There was a quota established on the amount of mix that you could manufacture.

Q. And why would you be given that information?

A. Because we were to give equal distribution to our mix accounts.

Q. Did you ever exceed the distribution to be given each account?

(Testimony of Caroline Nuekirchen.)

Mr. Griffin: Objected to as immaterial.

The Court: Objection sustained. [266]

Q. (By Mr. Obenour continuing): What was your system of keeping these accounts, Miss Nuekirchen?

A. Each account, I would keep a record of how much mix they were entitled to receive within that month, and if I made delivery, I would keep subtracting away from it.

Q. You would keep subtracting away from it?

A. Yes.

Q. What was the system used there by which you accounted for the sales made by your drivers?

A. Well, the drivers would check in at night, and I wouldn't always do that work, sir, so I will tell you of the times I did it.

Mr. Le Sourd: I didn't hear that.

A. (Continuing): I would check in the drivers at night, the sales slips.

Q. (By Mr. Obenour): And what would these sales slips be?

A. They would be both charge and cash slips.

Q. Do you know what a load slip is?

A. The driver's load sheet?

Q. Yes. A. Yes.

Q. What is that, please? [267]

A. That gives a description of how much the driver took out on his truck, and when he came back in at the end of the day, he would be checked back in.

Q. And what would be on that load slip?

(Testimony of Caroline Nuekirchen.)

A. The items that were pertinent to his truck.

Q. Pardon?

A. Whether ice cream or butter.

Q. What would be on the load slip when he went out in the morning?

A. The amount that he had on his truck.

Q. What would it show when he got back?

A. The amount left on his truck.

Q. What would he have to show for the amount sold during the day?

A. That would be the slip turned in.

Q. Would there be any money turned in for the slips? A. Yes, sir; for the cash slips.

Q. Who would check out then these load slips with the sales slips and money?

A. Miss Krall was doing that most of the time.

Mr. Le Sourd: I didn't get the answer.

The Court: Would you repeat the answer, please?

A. (Continuing): Miss Krall was the one that usually handled that.

Q. (By Mr. Obenour): What would she then do with this information?

A. She would recap it to the total number of gallons, quarts, pints, dozens of bars, and re-bill it out on another invoice and hang it on our cash spindle.

Q. Would she make any sort of a tape on the amount?

A. The tape would be made on the cash slips to determine how much money the driver should turn in.

(Testimony of Caroline Nuekirchen.)

Q. Who would run that tape first?

A. Ordinarily, it would be Miss Krall.

Q. And what would that tape show, again? Pardon me, I didn't understand. What do you mean by the tape, now?

A. The adding machine tape.

Q. The adding machine tape?

A. Of the cash sales.

Q. Of the cash sales.

A. Would determine how much money she was to collect from the driver.

Q. And that would be then checked out against the load slip?

A. Along with the charge slips, yes.

Q. Along with the charge slips; and what would she do with this information?

A. She would break it down into the total number of gallons or quarts or pints and rebill it on another invoice and hang it on our cash spindle, and that is the one I used to go on to my recap sheet.

Q. And what did you do with this information?

A. I would break it down as to whether it belonged to ice cream or butter or pop, or whatever that recap slip showed.

Q. What would you do with the charge sheets?

A. The charge accounts?

Q. Yes.

A. I would post them to my ledger card.

Q. You would post them to your ledger card?

A. Yes.

Q. And what did you do then with the cash sales?

A. Well, the cash sales would be broken down into whether it was ice cream or butter, over here

(Testimony of Caroline Nuekirchen.)

on my recap and then brought down to the bottom of the page, and put into usually the particular cash sales [270] or charge sales.

Q. During 1944 and 1945, did you post all of the cash receipts from the drivers upon that cash analysis sheet?

Mr. Griffin: Just a moment. Object to the form of the question, including the year 1944, not material and incompetent.

The Court: What is the purpose of 1944?

Mr. Obenour: Showing the period in which this practice begun, and over which it continued. There is some of the information included in the year 1945.

The Court: As a preliminary question, the Court will permit it and overrule the objection.

The Witness: You will have to state your question again.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read, by the reporter.)

A. No, sir; I didn't.

Q. (By Mr. Obenour): At whose instructions did you not post it to the sales analysis sheet?

A. Mr. Forster.

Q. And when did you receive those instructions [271] from Mr. Forster?

A. I don't remember what day or what month or what year. I just remember he instructed me.

Q. When was it, generally? A. Pardon?

Q. When was it generally, to the best of your recollection? A. During the quota period.

(Testimony of Caroline Nuekirchen.)

Q. When was the quota period?

A. During the War, that is all I could remember.

Q. Did you post all of the charge slips to the accounts receivable cards of your customers?

A. No.

Q. Upon whose instructions did you not post all of the charge slips to the accounts receivable cards?

A. I received some instructions from Mr. Forster and Mr. Erickson.

Q. Pardon?

A. Mr. Forster and Mr. Erickson.

Mr. Obenour: I don't think they heard the full answer, please.

The Witness: Mr. Forster and Mr. Erickson.

The Court: Can all the Jury hear all right?

A Juror: I got that last. [272]

Q. (By Mr. Obenour): What did you do with the charge slips delivered that you would not post to the accounts receivable card of the customer?

Mr. Griffin: May I have that question, your Honor?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. I would retain them in the drawer in my desk.

Q. (By Mr. Obenour): At whose instructions would you do this?

Mr. Griffin: If the Court please, I object to the form of the question. It assumes something.

The Court: Objection sustained.

(Testimony of Caroline Nuekirchen.)

Q. (By Mr. Obenour continuing): Did you receive instructions to put these unposted charge slips into your desk?

A. I was not instructed to put them in my desk.

Q. What were you instructed to do?

A. Not to post them.

Q. For what reason then did you put them in your desk?

Mr. Griffin: Objected to as immaterial. [273]

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Would you receive payment for these unposted charge slips?

A. Would you—would you repeat that back?

Q. Would you receive payment for these unposted charge slips?

A. Yes, I can recall one I got, sir.

A Juror: We can't hear. * * * * * [274]

Q. And what is the last entry prior to that date on the Renton Ice and Ice Cream Accounts Receivable card?

A. I have the posting as of December 10, 1943, for a credit of \$218.

Q. What is the next,——

A. (Continuing): Which balances the account.

Q. Pardon me. What is the next entry then on the Renton Ice and Ice Cream card?

A. October 23, 1944.

Q. Now, what are the dates of those other statements and customer invoices and checks on there?

A. Upon this, now?

Q. Yes, upon the first one.

(Testimony of Caroline Nuekirchen.)

A. The statement is dated February 15, 1944.

Q. Is that on there, posted onto the 146, or 246?

A. No, sir; it is not. [286]

Q. Are any of those statements and bills posted onto the accounts receivable card of Renton Ice and Ice Cream, any of those statements of Exhibit 200?

A. No, I cannot find them.

Q. At whose instructions were those statements and payments by check not put upon the accounts receivable card of Renton Ice and Ice Cream?

Mr. Griffin: Objected to the form of that question.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Did you receive instructions as to whether or not those should be posted to the Renton Ice and Ice Cream accounts receivable card?

A. Yes, I did receive instructions.

Q. And who instructed you not to post those into that account card?

A. Mr. Forster.

Q. Where would you keep the statement pending receipt of the check in payment for it?

A. I did not make the statements. I just kept the invoices.

Q. All right, where did you keep the invoices pending payment of the articles received?

A. In my desk. [287]

Q. Were you instructed to keep them pending receipt of the payment for them?

A. Yes, sir.

(Testimony of Caroline Nuekirchen.)

Q. And who instructed you to keep them?

A. Mr. Forster.

Q. And how did he instruct you to keep them?

A. He just told me to keep them in my desk until the check came in.

Q. And after you received the check in payment for those customer invoices in your desk, what would you then do with the invoice and the check?

A. I would give them to Mr. Forster.

Q. Where did you give them to Mr. Forster?

A. In the Issaquah office.

Q. Speak up, please.

A. In the office.

Q. Where in the office?

A. I don't quite understand your question, sir.

Q. Did Mr. Forster maintain his office at the Issaquah office at this time?

A. He had an office within our office.

Q. And did he have a desk in that office?

A. Yes, sir.

Q. And what would you then do with these checks and the accompanying invoices after you had received [288] them?

A. I was told to put them inside his desk.

Q. By whom? A. By Mr. Forster.

Q. Where inside his desk?

A. There was a top drawer that you pulled out.

Q. And what were you to do?

A. Lay them inside there.

Q. Did you do that in each instance?

A. There may have been some occasion when

(Testimony of Caroline Nuekirchen.)

the desk drawer was locked and that I would hold them or give them to him when I would see him, or give them to Mr. Erickson.

The Court: What was the last?

A. (Continuing): I would either hold the invoices and the check in my desk, and hand them personally to Mr. Forster, or I would give them to Mr. Erickson if the desk drawer was locked.

Q. (By Mr. Obenour): Pardon me, these were all charges, is that correct?

A. To the best of my knowledge, yes.

Q. I believe you have also stated now as to instructions pertaining to cash sales. Did you receive instructions pertaining to cash sales that [289] you would have received in the recap from the drivers?

A. Yes, I did have instructions.

Q. And who gave you those instructions?

Mr. Griffin: Objected to as repetitious.

The Court: As I recall, the instructions prior were as to quota sales. I don't recall it was necessarily the same question. The Court will overrule the objection. Do you understand the question? I will ask the reporter to read the last question.

(Whereupon, preceding question was read by the reporter.)

The Court: This is with relation to cash sales?

Mr. Obenour: Yes, sir.

A. To any cash slips?

Q. (By Mr. Obenour): Yes.

A. I received some instructions from Mr. Erickson and Mr. Forster. * * * * * [290]

(Testimony of Caroline Nuekirchen.)

Q. (By Mr. Obenour): What slips?

A. It was an ice cream slip.

Q. And was there any money attached to the slip?

A. Yes.

Q. What would you do then with the slip and attached money?

A. I was to put them into Mr. Forster's desk.

Q. What would you then do as to the driver's load sheet and to the tape attached thereto, pertaining to the sales made by the driver that day?

A. We would re-run—make a re-run of the adding machine tape for the slips that were being put through the books.

Mr. Le Sourd: I couldn't hear.

The Court: Mr. Reporter, read the answer.

(Whereupon, preceding answer was read by the reporter.) [294]

Q. (By Mr. Obenour): What did you do with the old tape that would show the returns as made originally by the driver and recapped by Miss Krall?

A. I don't recall what was done with them.

Q. What did you do with the new tape that was run?

A. That would be attached to the cash slip.

Q. What would be the purpose of attaching the new tape to the cash slips?

A. So that the amount of—when you added up the cash slips, they would equal the amount of the tape.

(Testimony of Caroline Nuekirchen.)

Q. What did you do with the tape and the cash slips you had retained?

A. They were stapled to the load sheet and filed away in the drawer after the recap had been made and put on the cash spindle.

Q. What information would you then make of the cash slips and the recap tape that you have thus acquired as to the sales analysis sheet?

I will rephrase the question.

Was the—were the slips finally stapled together with the new tape—would that show what information you had posted to the sales analysis [295] sheet?

A. Well, that would be taken off of the girls' recap sheet, yes.

Q. These slips that were withheld and the money, were they run through the deposit of the Issaquah Creamery, to its account in the Issaquah State Bank? A. Not—

Mr. Griffin (Interposing): If she knows, she said she did not handle that.

A. (Continuing): I do not know that they were.

Q. (By Mr. Obenour): Did you make deposit slips from the cash drawer for deposit to the Issaquah State Bank?

A. I was not the usual one to make up the deposit.

Q. Did you make them?

A. I have made them, yes.

Q. Would you include the money you put into Mr. Forster's drawer on any of those deposit slips

(Testimony of Caroline Nuekirchen.)

you would make up for the Issaquah State Bank for the account of the Issaquah Creamery?

A. No, sir.

Q. Did you ever make up any deposit slips for Mr. Forster for deposit into 198? [296]

A. I don't know what 198 is.

Q. Pardon? A. I don't know what 198 is.

Q. You don't know what 198 is? A. No, sir.

Q. Did you ever discuss this practice with Mr. Erickson after you had been following the instructions of Mr. Forster?

A. I have talked to Mr. Erickson about it. I don't know whether it was previous, or afterwards.

Q. Did you also handle the Daisy Ice Cream account? A. I recapped the sales of it.

Q. Pardon?

A. I recapped the sales of it.

Q. You recapped the sales? A. Yes, sir.

Q. Did you receive the Daisy Ice Cream delivery slips?

A. If you call invoices and drivers' load sheets that, yes.

Q. That would be a similar system of load sheets and attached invoices? A. Yes, sir.

The Court: Similar to Renton? [297]

Mr. Obenour: Yes. No, pardon me, sir. Similar to Issaquah.

Q. (By Mr. Obenour): What was—was Daisy Ice Cream also distributing ice cream and mix to your knowledge?

A. Distributing ice cream.

(Testimony of Caroline Nuekirchen.)

Q. Distributing ice cream; what would the loads then of the drivers be? What would the product be on the load slips of the drivers?

A. Ice cream.

Q. Would you withdraw any of the delivery slips of the drivers of Daisy Ice Cream in a manner similar to what you have described for the drivers of Issaquah? A. Yes, sir.

Q. Pardon? A. Yes, I would.

Q. At whose instructions would you do this?

A. Mr. Erickson.

Q. And what would you do with those withdrawals?

A. I just put them and filed them away in the basement.

Q. Pardon?

A. I just filed them away in the basement.

Q. Would those drivers' slips with the attached customer invoices have tapes on them showing the total [298] sales daily by each driver?

A. Yes, sir.

Q. Would you re-run a tape for each of the drivers of the Daisy Ice Cream in the same manner you have described for Issaquah Creamery?

A. Yes, sir.

Q. Pardon? A. Yes, sir.

Q. And what did you do with the old tape that would have been attached to the drivers' sheets for Daisy Ice Cream?

A. I don't recall what was done with them.

Q. What did you do with the new tape that you

(Testimony of Caroline Nuekirchen.)

would run on the remaining customer invoices attached to the drivers' load sheets?

A. It would be stabled to those invoices.

Q. And what did you do with those?

A. They would be recapped on a big sheet as to the total number of gallons and quarts and pints. That went into my sales analysis sheets.

Q. And the others that were withdrawn, what did you do with them?

A. I would file them away.

Q. Would you post them in any way on the records maintained by you? [299]

A. I did not post them on any records I maintained.

Q. Would you give them to anyone to post on any records maintained by your company?

A. No, I did not.

Q. Would you keep track of the charge accounts made, to the charge accounts service by the Daisy Ice Cream drivers?

A. Yes, sir.

Q. Which amount would you keep track of, all of the accounts receivable customers of Daisy?

A. I don't understand the question.

Q. Did you maintain records of accounts receivable of Daisy customers?

A. Yes, I have ledger cards.

Q. And would the entire amount of delivery prior to withholding, be the amount entered upon the respective customer cards?

A. I don't recall withholding any of the charge accounts.

(Testimony of Caroline Nuekirchen.)

Q. Any of the charge accounts? A. No.

Q. What would be withheld?

A. It would be cash slips.

Q. It would be cash slips? [300]

A. But not the cash.

Q. Did you make sales analysis——

Mr. Keesling: I didn't hear the last answer.

The Court: You did not get the last answer?

Mr. Reporter, will you read the last answer?

(Whereupon, the following was read by the reporter:

“Q. What would be withheld?

“A. It would be cash slips.

“Q. It would be cash slips?

“A. But not the cash.”)

The Clerk: Plaintiff's Exhibit 247 marked for identification.

(Plaintiff's Exhibit 247 marked for identification.)

Q. (By Mr. Obenour): Did you keep the sales analysis for Daisy Ice Cream cash sales also?

A. I have done it.

Q. And I hand you what has been marked as Plaintiff's Exhibit 247, a series of one, two, three, four, five stapled groups of papers, and ask if you will identify them, please?

A. Well, this is January, 1945, and this is a recap of the whole month. It says, “cash sales”.

This is the cash sales recap.

Q. Now, is that the——

(Testimony of Caroline Nuekirchen.)

Mr. Obenour: Pardon me. I offer it at this time, if the Court please.

The Court: Are you referring to one of the five, or are you referring to all of them?

The Witness: Oh, this isn't my writing. This isn't my writing, but apparently they are all the same sales analysis of Daisy Cash Sales.

The Court: You say "this is not my writing". You are referring to——

The Witness (Interposing): This one, and this one.

The Court: The last two in the group?

The Witness: Yes, sir; that is not my writing.

Q. (By Mr. Obenour): Any of the other sheets in there?

A. None of that is; none of this is.

Q. What is the title or the heading?

A. Daisy Cash sales.

Q. And is the same formation, and the same columns used on the others that are in your writing?

A. Yes, sir. * * * * * [302]

Q. (By Mr. Obenour): Can you say what they are, though, for context and entries and dates and titles? Those ahead show them, and the paper that was used.

The Court: She only identified the three.

Mr. Griffin: Some of these are fastened together, and I think she is referring to the first sheets, more than likely. [303]

If I may:

(Testimony of Caroline Nuekirchen.)

You said you didn't identify the last two. By the "last two", you mean the fastened?

The Witness: Yes, this, apparently, from what I can see, is the whole month.

Mr. Griffin: Will you take those in your hand, those that you did identify? That is what I want, please.

The Witness: These, January, February—January, February, March, and this is June.

Mr. Griffin: I have no objection to those.

The Court: March, January—what is that?

The Witness: January, February, and this one says March 1st to 15th.

The Court: What year?

The Witness: 1945. To the 31st of March, and then this says June, 1945. Oh, oh,—here is some that isn't my writing either.

Mr. Griffin: She just stated that sheets for June, 1945, being the first four sheets of June, she identified, as I understand.

Q. (By Mr. Obenour): Do you recognize whose writing that is in there? [304]

A. No, sir; I can't.

Mr. Griffin: I have no objection to the sheets that she has identified.

The Court: They will be admitted.

Mr. Keesling: I haven't seen the sheets.

Mr. Griffin: She has identified these sheets. Should I take these off?

(Whereupon, Mr. Griffin separated the papers.)

She has identified these.

(Testimony of Caroline Nuekirchen.)

Mr. Keesling: We have no objection.

The Court: Do you want to staple them together as one? You are detaching the portion that——

Mr. Obenour (Interposing): Yes.

The Court (Interposing): ——that she does not recognize?

Mr. Obenour: Yes.

The Court: There is no objection then to the sheets now which constitute 247 for identification, the other portions having been withdrawn at this time?

Mr. Griffin: No, your Honor.

The Court: They may be admitted.

(Plaintiff's Exhibit No. 247 admitted in evidence.) [305]

Q. (By Mr. Obenour): What are the dates there, January, and what is it?

A. January, 1945; February 1 to 15. Apparently this is February, 1945. Yes, February. March 1 to 15.

Q. 1945?

A. Yes. This one here is just entitled Daisy Sales, and does not say whether it is Daisy cash sales or what. On the first page, it says Daisy Cash Sales.

Q. What company are those for?

A. The Daisy Ice Cream.

Q. Daisy Ice Cream? A. Yes.

Q. And those are the records you have referred to as maintaining? A. Yes, sir.

Q. And what are the columns on those exhibits

(Testimony of Caroline Nuekirchen.)

on Exhibit 247, please? What entries would you make upon them?

A. It is the amount of money and—we called them squats, but they are 2½ gallon containers, and the amount of money, quarts, and the amount of money and pints, and the amount of money and bars, and the amount of money and one gallons, and the [306] amount of money and quarts of milk, mix and the amount of money, and the quarts and the amount of money, and there is a column for gallons of catering mix and the amount of money, and then there is a miscellaneous item. I don't have anything written there.

The Court: What is the last?

The Witness: Miscellaneous.

A. (Continuing): I don't have anything written there to identify it. It is just an amount of money.

Q. (By Mr. Obenour): Are those the sheets you have referred to now as showing the cash sales that were finally retained with the load sheets for the Daisy Ice Cream Company drivers?

A. I could not—I could not say whether this is the breakdown of all the slips, or not.

Q. Was it such a slip as this that you would enter the cash sales that you have retained with the drivers' load slips from Daisy Ice Cream Company?

A. To the best of my knowledge, this is the sheet that I kept, yes.

(Testimony of Caroline Nuekirchen.)

Q. And the ones that were withdrawn, would not be entered upon these sheets, is that correct?

A. That I cannot remember, whether they were on this sheet, or not. [307]

Q. Would you make any entry of the withdrawn slips? A. Not to my knowledge.

Q. Thank you.

Now, during what years were you withholding cash slips from Daisy Ice Cream?

A. I cannot remember how long, or when I started.

Mr. Le Sourd: I didn't hear.

The Court: Mr. Reporter, read the answer.

(Whereupon, preceding answer was read by the reporter.)

Q. (By Mr. Obenour): Do you have any—what is your best recollection of how long a period you were following such a practice?

A. During this quota period.

Q. During what period were you withholding the cash sales and money and the charge slips with accompanying checks and putting them in Mr. Forster's desk?

A. During the quota period.

Q. What is your best recollection of how long a period of time that was?

A. I can not remember, sir. [308]

Q. Did you ever discuss this practice with Mr. Erickson? A. Yes, sir.

Q. How long after you had been following these instructions did you mention it to Mr. Erickson?

(Testimony of Caroline Nuekirchen.)

A. I don't remember how long it was.

Q. Where did this conversation take place?

A. In his office.

Q. What did you say to Mr. Erickson?

A. I believe that I was withholding information relative to the quota established by the War Food Administration Order.

Q. And what did he say?

A. He said that he didn't like it any better than I did but he was following instructions.

Q. Did you say anything about your retaining, or changing the records that you were supposed to retain?

A. I don't understand that question.

Q. Did you have any conversation with Mr. Erickson about your practice of withholding required information?

Mr. Griffin: Object to——

A. I just answered that—— [309]

Mr. Griffin (Continuing): ——to the form of that question. It calls for a conclusion.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the Reporter.)

The Court: Objection sustained on the wording.

Q. (By Mr. Obenour): Did you have any further conversation with Mr. Erickson?

A. I can just recall that one time, sir.

Q. Well, what else was said during that conversation, if anything?

A. I just answered that question, sir.

(Testimony of Caroline Nuekirchen.)

The Court: Is that all you recall of that conversation?

The Witness: Yes.

Q. (By Mr. Obenour): Did you thereafter make any objection to Mr. Forster about following this practice you have described?

A. Yes, I did, sir.

Q. Where was this? A. In his office. [310]

Q. What did you say?

A. I told him I was objecting to withholding information from this quota and believed that it was in violation of the quota instructions that we had received on the Government Order.

Q. Did you go into any details about the practice that you have described here?

A. I don't remember going into details.

Q. How forcibly did you state your objections to Mr. Forster?

Mr. Griffin: Objected to as immaterial.

The Court: Objection sustained.

Q. (By Mr. Obenour): What was your conduct in Mr. Forster's office?

Mr. Griffin: Objected to as immaterial.

The Court: Objection sustained.

Q. (By Mr. Obenour): What did he say to you?

A. He told me that I was not doing anything wrong; and that he asked me, "Are you withholding money from me?"; and I said, "No, I wasn't withholding any money."; and he said, "Well, you are not doing anything wrong then."; and he says so far as the quotas go, it was just that these particu-

(Testimony of Caroline Nuekirchen.)

lar accounts did not have a quota and that [311] was the reason he wanted me to withhold the accounts, to protect the customer.

Q. He said what?

A. To protect the customer.

Q. What did you do during your conversation with Mr. Forster?

Mr. Griffin: Objected to as immaterial, what was——

The Court: It appears to be immaterial, Mr. Obenour. What she said and what he said, that is brought out. The other features would seem to be immaterial unless there is some showing as to materiality.

Mr. Obenour: I believe that her conduct during this time would have impressed the matter upon Mr. Forster's recollection and remembrance where the whole thing would have been within the conversation and her conduct during this time.

The Court: Well, if she wishes to describe what she stated and so on, and the circumstances.

Mr. Griffin: Counsel's statement that it was "impressed * * * upon Mr. Forster"—I have offered to stipulate since before noon these facts, that [312] these were unreported sales.

The Court: It seems to me the conversation and the material matters, and if there is anything further about the conversation that the witness recalls, why, she might so state.

A. Well, he just informed me I was not doing any wrong and it was just—he was just protecting

(Testimony of Caroline Nuekirchen.)

the customer because they did not have a quota to purchase this ice cream and so far as I was concerned I was not responsible.

Mr. Le Sourd: We can't hear.

The Court: They can't hear you.

A. (Continuing) Mr. Forster told me I was not responsible for holding out those slips because he was just doing it to protect the customer because they did not have a quota to buy ice cream.

Q. (By Mr. Obenour): What did you say after that; what did you say to that?

A. That I would continue to do it if I was not responsible.

Q. Did you ever discuss this matter with Mr. Taylor?

A. I mentioned it to him on one occasion, that I was having to work with these quotas, keeping [313] track of how much they got, and of the percentages each month, and if they went over——

Mr. Keesling: If the Court please, we can not hear the witness.

The Court: They are still having difficulty hearing so I would ask you to keep your voice up.

Mr. Reporter, you might read the answer so far. The witness can continue if she hasn't finished the answer.

(Whereupon, preceding answer was read by the reporter.)

A. (Continuing) And I was objecting to having to work with these quotas. I just didn't like it and

(Testimony of Caroline Nuekirchen.)

he said that his answer to me was that I was just following instructions. [314]

* * * * *

Mr. Griffin: In connection with the examination and cross-examination—and the cross-examination, I would like to read, if I may, if the Court please, from Plaintiff's Exhibit 238.

The Court: You may.

Mr. Griffin: Exhibit 238 is a stipulation entered into in this courtroom on Friday, February 19th. It was stipulated that—where—with reference to specific checks made payable to Issaquah [315] Creamery, not recorded on the corporate books, and deposited to Hans Forster's personal savings account, and the stipulation itself shows what is—it was read to you—and on the second sheet of the stipulation is an itemized statement of dates, check numbers, and the amounts from the Renton Ice and Ice Cream Company that went into this account.

Q. (By Mr. Griffin): Those are the items you are testifying to today? A. Yes.

Mr. Griffin: That is all. Just a moment. That is all. [316]

* * * * *

Mr. Le Sourd: Miss Neukirchen, you have testified that certain amounts were held out of sales and as I understand your testimony, those were not entered into the books at all?

A. To my knowledge, they were not entered in my books.

Q. Yes.

(Testimony of Caroline Nuekirchen.)

A. Whether they were entered in any other book, I would not know.

Q. Yes, but they did not, I think you testified, get into your sales pages here showing cash sales?

A. As far as I know, they did not get in there.

Q. And, thus, examination of these books themselves, [320] and particularly any books of final entry, would not disclose that there were any omissions of income, would it?

A. To look at that book?

Q. Yes.

A. No, sir; it would not disclose it.

Mr. Le Sourd. That is all. Thank you. [321]

* * * * *

IRA EPPLER

upon being called as a witness for and on behalf of the plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: I want your full name, and the spelling of your name.

The Witness: Ira Eppler, I-r-a E-p-p-l-e-r (spelling).

Q. (By Mr. Obenour): What is your name, please, sir? A. Ira Eppler.

Q. Where are you employed, Mr. Eppler?

A. By the Internal Revenue Service, 905 Second Avenue, Seattle.

Q. And what is your business with the Internal Revenue Service?

(Testimony of Ira Eppler.)

A. I am a Special Agent with the Intelligence Division.

Q. And what are the duties, with the Intelligence Division, of a Special Agent?

A. The principal duty is to conduct investigations of alleged tax fraud.

Q. In the course of your official duties, did you investigate alleged tax frauds against the Defendants in this case, Mr. Forster, Mr. Erickson and Mr. Taylor? [372]

A. Yes.

Q. Was anyone assigned to investigate this case with you?

A. Yes, Mr. William Marx was assigned to jointly conduct this investigation with me.

Q. And who is Mr. Marx?

A. At that time, he was an Internal Revenue Agent. He has since left the Government Service.

Q. Did you contact Mr. Forster personally during the course of your investigation?

A. Yes, I did.

Q. On what occasions did you have interviews or conversations with Mr. Forster during your investigation?

A. The first contact with Mr. Forster was on August 29, 1950. I later saw him on, I believe, November 22d. The following year, in 1951, on March 8th and March 9th, I believe, March 14th, and August 15th. [373]

* * * * *

Q. Concerning the butter subsidy payments previously referred to by the preceding witness, did

(Testimony of Ira Eppler.)

you ever have conversations with Mr. Forster concerning these butter subsidy payments?

A. Yes, I did.

Q. And what was the date of that?

A. August 15, 1951.

Q. What did Mr. Forster say concerning these butter subsidy payments? * * * * * [375]

A. He said that at some time during the past few years, he didn't recall which year, that some of the Government agents had called at the Issaquah Creamery concerning the butter subsidy payments with reference to whether or not they had been reported as income by the corporation.

Mr. Keesling: If the Court please, we cannot hear.

The Court: Mr. Eppler, you have been here [378] all during this trial?

The Witness: Yes, sir.

The Court: You should realize the problem we have.

A. (Continuing) He said that following this call by the Government Agents, that he was cautioned by his accountant that those butter subsidy payments should now be run through the corporation's books, and the bank account, rather than put in his personal savings account.

Q. (By Mr. Obenour): Prior to that, had you discussed with either Mr. Forster or his attorneys any matters pertaining to the butter subsidy payments? A. No, I had not. * * * * * [379]

Q. Now, at the time of original conversation

(Testimony of Ira Eppler.)

with Mr. Forster, at the accounting—at the office of the accounting firm, was there any conversation about the results of any investigation that had been conducted by the accounting firm up to that time?

A. Yes.

Q. What was that conversation?

A. The substance of it was that the accounting [397] firm had made a preliminary inquiry into Mr. Forster's and the Issaquah Creamery, Incorporated tax affairs, and they had determined that a very large amount of income had not been reported over the past ten-year period, and that a very large amount of additional tax was due. [398]

Q. Who made this statement?

A. I believe Mr. Kachlein did. * * * * *

Q. Did you ask Mr. Forster for any statement concerning this additional tax that was due, the manner in which it came about?

A. Since several hundred thousands of dollars additional——

Mr. Griffin: (Interposing) Just a moment, if the Court please. That isn't the beginning of an answer to that question.

The Court: Mr. Reporter, read the question.

(Whereupon, the preceding question was read by the reporter.)

A. Yes.

Q. (By Mr. Obenour): Did Mr. Forster make any statement concerning the source of his **income** upon which this tax was due? A. Yes.

(Testimony of Ira Eppler.)

Q. What did Mr. Forster say concerning the source of this income?

A. He said that some of the unreported income had arisen from his buying butter on a rising market, and later selling it at a high profit, from rebate payments he had received from Time Oil Company, and from the sale of some casein. [399]

Q. Was there any statement made by Mr. Forster as to whether or not this had been disclosed upon his—as previous income?

A. Yes.

Q. What did he say?

A. Well, there was a general conversation about it, and we were talking about the items which had not been reported, and the items were enumerated as explanation as to what the unreported items represented.

Q. Who made these representations of these items being undisclosed income?

A. I believe Mr. Kachlein referred to the amount which had been determined by the accounting firm.

Q. But as to these specific items themselves, the sale of butter, casein, and the Time Oil rebates?

A. That was Mr. Forster who referred to those items.

Q. Did Mr. Forster say what his recollection of the amount of the casein sale was? A. Yes.

Q. What did he say the amount of that casein sale was?

A. He said his recollection was that it was a

(Testimony of Ira Eppler.)

[400] small amount, perhaps three or four thousand dollars. [401]

* * * * *

Q. (By Mr. Obenour): Did you determine what the amount of casein sales were? A. Yes.

Q. What was the amount?

A. A total of slightly more than twenty-four thousand. [405]

* * * * *

Q. (By Mr. Obenour) continuing): What was the information that you requested of Mr. Erickson when he referred to this—to the cash from this ice cream? How did the conversation come about?

A. Well, we asked him if he could throw any light on the large amount of income which Mr. Forster's accountants asserted was unreported for this period of years, I believe from 1940 to 1950, without specifying any particular year.

Q. Did you ask him concerning his knowledge of the sale of casein?

A. I believe he volunteered that information. I don't think we asked him about it specifically.

Q. What was his conversation concerning his recollection of the sales of Issaquah Creamery—rather, sale by Issaquah Creamery of casein? [411]

* * * * *

A. Mr. Erickson recalled that casein had been sold by the corporation and not recorded in its books, and that he had arranged the sales with a representative of Casein Company of America. He

(Testimony of Ira Eppler.)

mentioned the name Haroldson at first, and then corrected it to Leonardson. [412]

He at first said that he did not believe he had had anything to do with the billing of it, however, or the receipt of the check.

Q. (By Mr. Obenour): Upon a later occasion, did you have a conversation with Mr. Erickson again concerning this billing of the casein sales?

A. Yes, on March, 1951, he was in my office and I talked to him about it again, and I handed him all these photostats included here, and asked him if in fact, the billing had not been prepared by him, and he said they had, but after he looked at the photostats that the checks representing receipt of payment from Casein were received pursuant to the billings which he had sent the Casein Company of America. [413]

* * * * *

Q. Did he make any statement as to whether or not the checks, exhibit 233, had been received by Issaquah—Issaquah Creamery?

A. He acknowledged that they had been, yes.

Q. Did he make any statement as to whether or not those had been entered upon the books of the Issaquah Creamery?

A. He said that they had not been.

Q. Did he give any reason as to why they had not been?

A. Generally, yes, he did.

Q. What did he say?

A. He said that there was no provision in the

(Testimony of Ira Eppler.)

ords. That was one of the things which I mentioned before that we could ask Mr. Erickson about, whether or not [433] he could throw any light on what these currency deposits consisted of.

Q. Did you make any investigation concerning the depositing of these coins and currency in conjunction with the statement of Mr. Forster and Mr. Erickson as to the possible sources of undisclosed income? A. Yes.

Q. What was that investigation?

A. Well, both Mr. Forster and Mr. Erickson mentioned currency rebates from Time Oil Company.

Later on, in our inquiry, we learned that farm rental had also been received in the form of currency, or at least as near as the farmer out there could recall, he had made the payments in the form of currency, so we made an effort to identify all items of currency that Mr. Forster had received during that period.

Q. What period is that?

A. Well, we actually covered the period beginning with 1942 through 1949.

Q. Did you make any attempt to determine whether or not the exhibit 233, the Casein check, had been deposited into 198, from the use of these deposit slips? [434] A. Yes.

Q. And what is the date of the Casein sales?

Mr. Griffin: If the Court please, I think I should inquire, what is the materiality of this testimony?

(Testimony of Ira Eppler.)

There has been stipulated in evidence the stipulation in the exhibit 215 weeks ago, that they are unrecorded sales and deposited in Account 198. What difference does his investigation make as far as this case is concerned as to materiality?

It is an admitted fact, and has been. [435]

* * * * *

Q. (By Mr. Obenour continuing): Did you determine whether or not the Casein Sales checks had been deposited to 198? A. Yes.

Q. And what—were they in fact deposited?

A. Yes, they were.

Q. Did—would you give the Court examples of these deposits of currency and cash or, rather, currency for Casein to which you have referred—from [437] these deposits?

Mr. Griffin: If the Court please, how does this witness know what was deposited, unless it was based on exhibits in evidence which speak for themselves?

Mr. Obenour: To avoid reading the entire list of deposits, we have this witness select examples of those currency and coins to which he has testified.

The Court: You are referring to Exhibits now. I don't think the question referred to them.

Mr. Obenour: I referred to the deposit slip, yes.

The Court: All right, if you are referring to a particular exhibit, and ask him to point out examples, you may do so.

Mr. Obenour: Yes, sir. We are referring now

(Testimony of Ira Eppler.)

to the deposit of cash and coins to which this witness has testified.

The Court: He testified generally. Are you asking——

Mr. Obenour: No, sir, the question was, if he would select examples from 51, -2, -3 and -4 of deposit of cash and coins to 198 through the use of these deposit slips? [438]

Mr. Griffin: I suggest that the deposit slips speak for themselves.

The Court: There may be some identifying method, or something. Do you understand the question, Mr. Witness?

The Witness: Yes, I understand the question.

The Court: All right, the Court will overrule the objection at this time. You might proceed, and we will see what the answers are.

A. Well, in glancing through, without trying to find any particular one in Exhibit 53, I see the deposit ticket for December 15, 1945, with a total deposit of \$49,552.82, of which \$850 was indicated in currency. [439]

* * * * *

Q. (By Mr. Obenour): Concerning this \$17,100 which you testified yesterday is shown by Exhibit 251 of payments on principal to Mrs. Finstad in the years 1945 to 1949, I hand you 251 and those payments on principal to which you testified. Did you discuss those payments with Mr. Egeness?

A. Yes.

(Testimony of Ira Eppler.)

Q. Did you discuss the payments of \$17,100 that were paid to Mrs. Finstad with Mr. Forster?

A. Yes.

Q. What did Mr. Forster say about the [463] \$17,100?

A. Well, I don't believe he specified that amount. He talked about the total payments. He said that the—he acknowledged that the payments had been made. [464]

* * * * *

Mr. Le Sourd: If the Court please, we wish to insist on our motion to strike, and will desire to present argument to your Honor on this, because we feel that where a motion for a separate trial has been made in advance, it is improper to bring out prejudicial hearsay of this kind in a case of this sort. [465]

* * * * *

Q. (By Mr. Obenour): Handing you Exhibit 149, which has been identified as a group of checks drawn on Finstad and Utgard, and payable to Mrs. Mary Finstad, and which are included in the \$17,100 of Exhibit 251, and handing you also Exhibits 1, 2, 3, 4 and 5, which have been identified as the income tax returns of Mr. Hans Forster, the first four, and the joint return of Hans and Evelyn Forster for 1949, can you find those checks of \$17,100 of that five-year period listed on the exhibits 1, 2, 3, 4 and 5, the tax returns? [467]

* * * * *

(Testimony of Ira Eppler.)

Mr. Griffin: So far as the Defendant Forster is concerned, it has been conceded they are not on the return. [468]

* * * * *

Q. (By Mr. Obenour): What did you do first in regard to those checks, Mr. Eppler?

A. We requested that they be submitted to us by Finstad and Utgard.

Q. What did you then do?

A. We examined the deposit tickets of account 198 and found that they were listed on the deposit tickets of Account 198.

Q. Did you do anything further?

A. Yes, we examined the accounts receivable ledger cards of Issaquah Creamery, Incorporated, to see whether or not these checks were listed on the accounts receivable ledger cards, and we examined the sales analysis sheet, this large book here, to determine whether or not these checks were listed as [481] receipts by Issaquah Creamery in that book.

Q. Were they listed on either the books you have mentioned?

A. These checks here were not, no, sir.

Q. What are the totals of the checks of Exhibit 150?

A. I find that there is a total of \$4,414.03. [482]

* * * * *

Q. (By Mr. Obenour): How are the exhibits, the drafts of 221 and 222, entered upon the books, Exhibits 216, 217, 218, 219 and 220?

(Testimony of Ira Eppler.)

A. They are listed as miscellaneous expenses to account 12.

Let me check again, to be sure. General expenses.

Q. Did you investigate the exhibit 221 and 222 in your analysis of 198, Account 198?

A. Yes, sir.

Q. What did you do in that phase in your investigation of 221 and 222 as pertaining to account 198? [486]

A. Well, we looked at the deposit tickets to see whether or not they were listed on the deposit ticket, and actually deposited in that account.

Q. And what did you find?

A. We found that they were so deposited.

Q. And that is to where; deposited to where?

A. Account 198, Washington State Bank, Issaquah Branch.

Q. Did you talk to the President of Simonson and Forster about this—these \$100 drafts of Exhibit 221 and 222? A. Yes.

Mr. Griffin: Objected to as immaterial, if the Court please, unless some defendant was president.

The Court: The President was someone other than the defendant, I take it.

Mr. Obenour: Yes, sir.

The Court: What is the materiality of it?

Mr. Obenour: We will withdraw the question.

Q. (By Mr. Obenour): Did you talk to Mr. Forster about these \$100 items?

A. Yes, I did. [487]

(Testimony of Ira Eppler.)

Q. What did Mr. Forster say about these \$100 drafts of Simonson and Forster?

A. My recollection is that in response to my question concerning salaries, he said that he had received and was still receiving \$100 a month from Simonson and Forster, Incorporated?

Q. And when did he make this statement?

A. I believe it was on March 8, 1951.

Q. What are the total—what is the total of the checks—drafts—made out to Mr. Forster by Simonson and Forster during the years 1946, '7, '8 and '9? A. \$2600.

Q. Now, I will ask you to examine Exhibits 1, 2, 3, 4 and 5, the tax returns of Mr. Forster, and can you determine if the \$2600 is included in the respective years in Mr. Forster's returns?

A. No, sir; it is not.

Q. Did you examine the books and records for tax returns of Renton Ice and Ice Cream Company?

A. I examined the books and records of Renton Ice and Ice Cream Company. I have looked at the tax returns, but I don't think it would be proper for me to say that I examined them.

Q. Handing you Exhibits 202, 203, 204, 206, 207, 208, [488] 209 and 210.

Did you do anything in regard to those respective exhibits which have been identified as checks paid by Mr. Schneider to Mr. Forster from Renton Ice and Ice Cream? A. Yes, sir; I did.

(Testimony of Ira Eppler.)

Q. What did you do in regard to those exhibits just mentioned, 202 through 210?

Mr. Griffin: Just a moment, if the Court please, Counsel uses the term "Identified . . . as paid to Mr. Forster." The record shows 205 was a check for \$600 paid to Mr. Taylor.

Mr. Obenour: 205 is not included.

Mr. Griffin: I am sorry. I thought it was 202 to 210.

The Court: 205 is omitted. I think I might state Counsel's description of an exhibit is not to be considered as evidence of what it may be.

Mr. Griffin: I will endeavor, if the Court please, to let examination proceed as he wants, because what he is doing doesn't seem to me to be material. He is proving that which is admitted, and has been admitted in this case from the start. No dispute. I can't see the materiality.

Mr. Obenour: One thing not yet proved, if [489] the Court please, by the preceding testimony is the receipt and the effect as to whether or not the tax returns were—picked up these various items.

Mr. Griffin: The tax returns are in evidence.

The Court: I understood yesterday that some of this testimony, at least, is foundation testimony. Apart from factual testimony on that ground, I take it, it is material, and in any event, if the Government feels it is material and so states, the Court will overrule any objection.

You do represent it to be essential and material?

Mr. Obenour: Yes, sir.

(Testimony of Ira Eppler.)

The Court: Do you have the question in mind?

The Witness: I am sorry.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

The Court: That excludes 205. It is understood those were the ones he stated that were referred to him, as I have noted them.

A. We examined the deposit tickets of Account 198 to see whether or not these checks were listed on [490] the deposit tickets. We talked with Mr. Schneider about them, and examined the books of Renton Ice and Ice Cream to see how they were listed in the books.

We talked with Mr. Forster about them, and we talked with Mr. Taylor about them.

I probably should exclude Exhibit 209. I don't recall that I talked to Mr. Taylor about that one.

Q. (By Mr. Obenour): Did you determine if you—you said you examined the books and records of Renton Ice and Ice Cream?

A. Yes, sir.

Q. And what account was charged on the books of Renton Ice and Ice Cream as to those exhibits?

A. Well, referring to Exhibit 202, my recollection is that they were charged to the salary accounts of Schneider and Baskett.

With reference to Exhibit——

Mr. Le Sourd: (Interposing) If the Court please, may I ask that in connection with this testimony he describe Exhibit 202 as to what it is?

(Testimony of Ira Eppler.)

The Court: If you wish, and to clarify it.

A. Exhibit 202 is the group of three checks dated [491] August 31, 1943. The first one is payable to R. J. Schneider in the amount of \$125 and the remaining two are both paid to C. M. Baskett, the first one in the amount of \$125 and the second one in the amount of \$250, and the endorsement on the first check, the one payable to Mr. Schneider, is endorsed by Mr. Schneider and by Mr. Forster. The \$125 check payable to Mr. Baskett is endorsed by Mr. Baskett and by Mr. Forster. The third check payable to Mr. Baskett is endorsed by Mr. Baskett and his wife.

My recollection of these checks is that they were charged to the salary accounts, respectively, of Schneider and Baskett.

Exhibit 203 consists of three checks, all dated April 17, 1945, the first one payable to R. J. Schneider in the amount of \$1,158.50, and endorsed manually by Mr. Schneider and with a rubber stamp by Hans Forster.

The second check is issued to Maizie R. Baskett, in the same amount, \$1,158.50, and bears the same type of endorsement, except it is, of course, endorsed by Mrs. Baskett and a rubber stamp endorsement by Mr. Forster.

The third one in the amount of \$2,317—that is, \$2,317—is endorsed only by Mrs. Baskett. [492]

Likewise, I believe these were charged to the salary accounts of Schneider and Baskett, respectively.

(Testimony of Ira Eppler.)

Exhibit 204——

The Court: (Interposing) May I interrupt here? Aren't these exhibits all of a similar nature?

Mr. Obenour: Yes, sir.

Mr. Le Sourd: They are, and this was all testified to.

The Court: He is doing this at your request, as I understand.

Mr. Le Sourd: I simply wanted to show that these checks were payable to Schneider and Baskett and charged to that account.

The Court: Is it your desire that he read each one?

Mr. Le Sourd: Not necessarily. It is understood that these are checks payable to Schneider and Baskett.

Mr. Keesling: I request where they are indicated in what exhibit—the exhibits in here—if he will show us where they are posted.

The Court: Do you question it?

This all takes time. If you desire to have him do it and insist on it—— [493]

Mr. Keesling: Just generally.

Mr. Obenour: Exhibit 199, if the Court please.

Mr. Griffin: As I have said, your Honor, I will not object, because it is all in evidence, everything he is testifying to. It is admitted.

The Court: As I understand, Mr. Keesling desires to have him point out specifically where he found it.

(Testimony of Ira Eppler.)

Mr. Keesling: I will withdraw that for the purpose of saving time.

The Court: You may proceed then, Mr. Obenour.

Q. (By Mr. Obenour): Were all those checks of a similar nature then payable in the manner you have described the previous ones?

A. Well, they aren't identical, but they are similar.

Q. And how were they—to what accounts were they charged?

A. To the salary accounts of Schneider and Baskett.

Q. Handing you Exhibits 76, 77 and 75, which have been identified as cashier's checks ordered by Mr. [494] Schneider and payable to Mr. Forster at the Peoples National Bank of Washington, did you do anything in regard to those bank drafts, or, rather, cashier's checks—pardon me?

A. Yes, we did.

Q. What did you do in regard to those cashier's checks?

A. Again, we examined the deposit tickets of account 198 to determine whether or not they were listed on them. We examined the records of the Renton Branch of Peoples Bank, to determine who had purchased them. We talked with Mr. Schneider about them, and we examined the books of Renton Ice and Ice Cream to see whether or not there was any notation in the books referring to them.

We talked with Mr. Forster about them, and we talked with Mr. Taylor about them.

(Testimony of Ira Eppler.)

Q. Where were these cashier's checks deposited?

A. I believe they were deposited in Account 198, with the exception of one, which is deposited in the savings account of Mr. Forster at the Renton Branch of Peoples Bank.

Q. What was the total amount of these cashier's checks, and checks that was received by Mr. Forster? [495]

A. I have a total of \$14,026.13 for the years 1945 through 1949. There are some additional checks here which were received at an earlier date not included in that total.

Q. Were these checks received by Mr. Forster included on Exhibits 1, 2, 3, 4 or 5 in their respective years, the tax returns of Mr. Forster?

A. They do not appear on those exhibits, no, sir.

Q. Did you discuss—you say you discussed this with Mr. Forster. What did Mr. Forster say regarding these checks and cashier's checks totalling fourteen thousand dollars?

A. He said that he had rendered services to the corporation, and that this represented reimbursement to him for his services. That is my recollection of the substance of what he said about them.

Q. Did you speak to Mr. Taylor about this item of fourteen thousand dollars as representing these exhibits that you have mentioned?

A. Yes, I did.

Q. What did Mr. Taylor say?

A. He said that he knew about them, and that

(Testimony of Ira Eppler.)

he had told Mr. Forster in what bank account to deposit them. [496]

Q. What description did he give to the checks?

A. He said that he didn't know how to describe them. That the Board of Directors of the corporation had not voted a salary for Mr. Forster so he didn't classify them as salary for that reason.

Q. Did he say anything as to his knowledge when he had first obtained his knowledge concerning these checks?

A. Well, I believe he indicated that he knew about them from the beginning of the issuance of the checks throughout the period.

Q. Did he say anything as to whether or not there was a system to it, or a plan to the payment of these checks?

Mr. Griffin: Objected to as leading.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Did he describe to you the manner in which the checks were paid?

Mr. Griffin: Just a moment, if I may. By "he," I assume you are now referring to Mr. Taylor, but I can't tell, definitely.

Mr. Obenour: That is correct.

A. Well, I discussed all these checks with him. I think we had photostats of some of the cashier's checks. [497] and he generally said that he knew about them and knew that the payments were being made.

Q. (By Mr. Obenour): Handing you Exhibit

(Testimony of Ira Eppler.)

200, did you do anything in regard to Exhibit 200?

A. Yes, sir.

Q. And what are those items there included on Exhibit 200?

A. This is a group of checks—billings—and sales invoices. The billings and sales invoices were issued by Issaquah Creamery Company. The checks were issued by Renton Ice and Ice Cream Company, payable to Issaquah Creamery Company.

Q. What did you do in regard to Exhibit 200?

A. We first asked for all of the checks issued by Renton Ice and Ice Cream Company to Alpine Dairy and Issaquah Creamery.

After we had the checks in our possession, we sorted out those which had been—appeared to have been deposited in Account 198. We then went out to Renton and asked Mr. Schneider for the supporting papers, on which he had issued these checks, and he produced for us these billings from Issaquah Creamery, and his copy of the sales invoices describing the merchandise which Renton Ice and Ice Cream had bought, [498] itemizing each of these billings.

We then went over to Issaquah to the Creamery Office, and asked Mr. Erickson for the accounts receivable ledger card for Renton Ice and Ice Cream Company, and compared these checks and statements with that card to see whether or not they were listed on the card.

Q. Were they listed on the card?

A. No, they were not.

(Testimony of Ira Eppler.)

Q. Where were these checks deposited?

A. I believe they were all deposited in Account 198.

Q. And what is the payee on each one of the checks?

A. Issaquah Creamery Company.

Q. What is the total of Exhibits 200, the total of the checks included in Exhibit 200?

A. There is a total of \$2,684.06.

Mr. Griffin: If the Court please, I would like to suggest to your Honor that that which the witness has just testified to are items 139 to 148—147—in the stipulated Exhibit 238 which was stipulated February 19th.

I still, notwithstanding the representation of Counsel, suggest that it is just proving the admitted [499] fact and admitted stipulation.

The Court: I take it that—would that stipulation cover the fact that this witness made the investigation, and determined the fact as it appears undoubtedly on the stipulation?

Mr. Obenour: No, sir; that simply stipulates to a given amount.

The Court: I understand the stipulation as it is, but would that include that, Mr. Griffin?

Mr. Griffin: Well, I suggest that what he did is immaterial. That is my point.

The Court: I don't know what you may be asking this witness for undoubtedly and——

Mr. Griffin: (Interposing): Well, neither do I.

The Court: (Continuing) ——so I must accept

(Testimony of Ira Eppler.)

his representation that it is material to some subsequent testimony, and I take it, when you say it is going to be material, it is material to something in addition to the facts covered by the stipulation.

Mr. Obenour: Yes, sir. The materiality will be the next question, if the Court please.

The Court: You may proceed. That is all I am concerned about. [500]

Q. (By Mr. Obenour): Examining Exhibits 1, 2, 3, 4 and 5, the tax returns of Mr. Forster, are the amounts you have just stated as being the total of Exhibit 200 included in the respective tax returns of those exhibits? A. No, they are not.

Mr. Griffin: If the Court please, if I may interrupt again, in the light of Counsel's representation, the stipulation specifically says that they are not recorded on the books of the corporation.

Now, what—we have conceded they are not recorded on the books, and not in his income tax returns. [501]

* * * * *

Q. (By Mr. Obenour): Did you do anything regarding Exhibit 209? A. Yes, sir.

Q. What did you do in regard to 209?

A. We followed the same procedure. We asked—there was one of the checks included in this which we had requested from Renton Ice and Ice Cream. We examined the deposit tickets of Account 198 and found that it was listed thereon.

Q. What was this check drawn for?

A. It was issued to Issaquah Creamery [502]

(Testimony of Ira Eppler.)

Company. I believe it was charged in the Renton Books as the purchase of a freezer.

Q. Where was it?

A. Or a freezer cabinet. It was deposited in account 198.

Q. Was it entered on the books and records of Issaquah Creamery? A. No, it was not.

Q. Was it shown upon the tax return of Mr. Forster? On either Exhibits 1 through 5?

A. No, sir, it as not. * * * * * [503]

Q. What did Mr. Forster say he was receiving in the way of salaries during this period?

A. He mentioned his salary from Issaquah Creamery Company, Incorporated, for eighteen thousand per year, the payments received from Simonson and Forster, of \$100 a month, and the payments received from Renton Ice and Ice Cream Company. He didn't specify the amounts. And, also, in connection with a series of questions which I asked him about, he referred to the payments made on his behalf to Mrs. Finstad of Finstad and Utgard.

Q. Did he make any statement concerning payment of dividends by any of the corporations in which he had an interest? A. Yes. [511]

Q. What did he say?

A. He said that none of the corporations in which he had an interest had ever paid any dividends.

Q. What did he say concerning the reason that

(Testimony of Ira Eppler.)

he was receiving money from Renton Ice and Ice Cream Company?

A. He said that he was rendering services to the corporation.

Q. Did you ask him about the receipt of the checks for ice cream mix, and check for the sale of the freezer, which check having been made out to Issaquah—Issaquah Creamery?

A. I believe that I included those checks in a number of other items which I asked him about, yes, sir.

Q. What did Mr. Forster say concerning these checks?

A. He said that the employes in the office at Issaquah, and particularly Mr. Erickson, brought these items to him, saying that they didn't have any place to record them in their records.

Q. Did he say what he did with them after that?

A. I believe he said that they oftentimes accumulated in his desk drawer for several days, at times as much as ten days or two weeks, and that [512] periodically he deposited them in his savings account.

Q. Did he make any statement concerning whether or not there was anything else that would accompany these checks that he would receive?

A. I believe that he mentioned sales tickets accompanying some of the items which were placed on his desk, or put in his desk drawer.

Q. What did he say happened to these sales tickets, or other papers, accompanying these checks?

(Testimony of Ira Eppler.)

A. He said that when he cleaned out his desk that he threw them in the waste paper basket.

Q. Did Mr. Forster say anything about the money he received from Finstad and Utgard?

Mr. Griffin: I suggest that is repetitious, three times.

The Court: It would appear to be repetitious.

Q. (By Mr. Obernour continuing): Did Mr. Forster say anything concerning the checks made out by Finstad and Utgard for the supplies?

A. I believe he referred to them, yes, sir.

Q. What did Mr. Forster say concerning the checks made out to Issaquah Creamery for the supplies of Finstad and Utgard? [513]

A. I think that he included those in his comments about the items which Mr. Erickson brought to him saying he had no place to record them in his books and records. [514]

* * * * *

Q. Handing you Exhibit 190, did you do anything in regard to 190, a check to Issaquah Creamery? A. Yes, sir; I did.

Q. What is that check?

A. It is a check issued by Darigold Farms payable to Issaquah Creamery. The amount is \$4,939.74.

Q. Did you examine the books of Issaquah Creamery in regard to the payments of Milk Equalization checks by Darigold?

A. Yes, sir; I did. [518]

Q. What did the books of Issaquah Creamery show as to the checks payable to Issaquah Cream-

(Testimony of Ira Eppler.)

ery by the Darigold for Milk Equalization payments?

A. During the spring and summer of 1947 there are a series of checks issued by Darigold Farms to Issaquah Creamery Company which are listed in this sales analysis book with the exception of this one check which was the last check issued by Darigold Farms for Milk Equalization checks to Issaquah Creamery in 1947.

Q. Was Exhibit 190 entered upon the books and records of Issaquah Creamery, the checks?

A. The check made a part of this exhibit was not listed in their books and records.

Q. What is the total of the checks made by Apex Farms to Issaquah Creamery which were listed as milk equalization checks as shown on Exhibit 142?

A. Twenty-three thousand—excuse me. The total I have includes the calendars, as well. I have a total of \$23,030.92. [519]

* * * * *

Q. (By Mr. Obenour continuing): What did you find in your analysis of the books and records of Alpine Dairy?

A. In examining the books, we found that a number of checks had been issued and claimed as expense, which in fact were deposited in Mr. Forster's personal savings account.

Q. Handing you Exhibits 66, 66-A, 67 and 67-A, did you do anything regarding those checks included in those four exhibits? A. Yes.

(Testimony of Ira Eppler.)

Q. What did you first do concerning these checks in 66, 66-A, 67 and 67-A?

Mr. Keesling: If the Court please, with reference to the previous answer, I move to strike his phraseology, "which in fact". [522]

The Court: Well, I don't recall specifically. There was no objection made. I will deny the motion. You might proceed. Do you have the question in mind?

Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. Well, my recollection is that I made a list of them from the deposit tickets and the analysis of account 198.

Q. (By Mr. Obenour): What did you then do?

A. I requested that the checks be supplied to me.

Q. Were they? A. Yes, they were.

Q. What did you do then?

A. I think the only remaining things which I did with reference to them was to talk to Mr. Forster about them, and to Mr. Erickson and to Mr. Taylor.

Q. Did you determine where those checks were deposited?

A. They were listed on the deposit tickets in account 198. [523]

Q. And how were these checks charged on the books of Alpine as retained at Issaquah Creamery?

A. They were all deducted as some type of busi-

(Testimony of Ira Eppler.)

ness expense. The principal classification, I believe, is rebates to customers.

Q. What are those checks; what are those checks then as to the payee? Who were the payees of those checks?

A. There is a long list of them. Do you want me to read from the checks?

Mr. Griffin: I suggest, if the Court please——

The Court: (Interposing) They are in evidence.

Q. (By Mr. Obenour): Is there any general classification as to the type of the check?

Mr. Griffin: They have been identified as discount checks by the Government's own witnesses.

The Court: Objection will be sustained to the question.

Q. (By Mr. Obenour): Are there any other checks there other than the discount checks?

A. I believe there are, yes, sir. [524]

Q. What are the totals of the checks in 66, 66-A, 67 and 67-A?

A. I find that there is a total of \$2,331.05.

Q. And how were those checks charged off?

A. They are all charged as business expense.

Q. Those that are——

A. (Interposing) The principal classification is as rebates to customers.

Q. By whom were these charges to expenses made?

A. But Mr. Erickson told me that he had charted them as a rebate to customers, and I don't recall discussing the balance of them with Mr. Erickson

(Testimony of Ira Eppler.)

specifically, but he said that he did chart all the checks as to what type of deduction they represented. [525]

* * * * *

Q. Did you find in the books that you examined any occasions where he had voided a check?

A. Well, yes, in the check register for Alpine Dairy, the Issaquah Creamery from time to time there appeared checks where he has simply written in "cancelled" without showing any other detail.

Q. Did you talk to Mr. Forster about these checks, 66 and 67?

A. I believe I did, yes, sir.

Q. What did Mr. Forster say?

A. He said that Mr. Erickson simply brought these checks to him and said he didn't have any provision in his books for them.

Q. Did he say anything further?

A. Yes, that he had deposited them in his savings account.

Q. Did he say anything concerning where he received these checks?

A. Yes, he indicated that they were either placed on his desk or a desk drawer, if he was not present at Issaquah when he would return he would find them on his desk, or in his desk drawer.

Q. Did he give any reason why he put them into his personal savings account 198? [528]

A. Yes, he did.

Q. What did he say?

A. My recollection is that he said that since

(Testimony of Ira Eppler.)

there was no provision in the books for them, that he felt that he should put them in a safe place.

I should add that that explanation was offered, not only with reference to these particular checks, but checks generally handed to him or placed in his desk.

Q. Were any of these checks included upon the income tax return of Mr. Forster for the year in which it was received?

A. They don't appear as such on the tax return, no, sir. [529]

* * * * *

Q. (By Mr. Obenour): I ask you to examine 255 and can you find any of the checks, Exhibit 253, Exhibit 254, the two checks in 239, payable to Alpine, and the one check in 239 payable to Issaquah, charged upon Exhibit 255? A. Yes, sir.

Q. Which ones are on 255?

A. The check of \$774.68 to Issaquah Creamery; the [542] check of \$447.59 to Issaquah Creamery; the check of \$641.16 to Alpine Dairy; the check of \$457.72 to Alpine Dairy; the check of \$492.05 to Alpine Dairy.

Q. And what is the account to which those checks are charged?

A. They are charged on the delivery expense account.

Q. Of what company?

A. Arctic Gardens.

Q. And what is the total then of these five checks?

(Testimony of Ira Eppler.)

A. I have them broken down by company only. I can combine them and give them the total, if you wish. For Alpine, the total is \$1,672.27. For Issaquah, \$1,088.75. The combination would be slightly more than twenty-seven hundred dollars.

Mr. Obenour: May this be marked, please?

The Clerk: Plaintiff's Exhibit 256 marked for identification.

(Plaintiff's Exhibit 256 marked for identification.)

Q. (By Mr. Obenour): Did you examine the tax returns of Mr. Forster for the years 1945 to 1949, to determine whether or not those checks had been included on his tax returns? [543]

A. Yes, I did.

Q. Are they included on his tax returns?

A. No, they are not.

Q. I hand you what has been marked Plaintiff's Exhibit 256 and ask you if you can identify this?

A. Yes.

Q. And what is it, please?

A. It is the 1946 corporate tax return of Arctic Gardens, Incorporated.

Q. Do you recognize the signatures appearing upon that tax return? A. Yes, sir.

Q. Whose signature?

A. I recognize part of them.

Q. What signatures do you recognize upon it?

A. L. Hicks Taylor.

Q. And what is the date of the tax return, please?

(Testimony of Ira Eppler.)

A. It is for the calendar year 1946.

Q. Can you determine——

Mr. Obenour: Pardon me. I will offer it at this time, if the Court please.

Mr. Le Sourd: There is no objection, your Honor.

Mr. Griffin: We have no objection.

Mr. Keesling: We have no objection.

The Court: Exhibit 256 for identification [544] may be admitted.

(Plaintiff's Exhibit 256 admitted in evidence.)

Q. (By Mr. Obenour continuing): Is there a check included on 239 in the amount of \$773.21 payable to Hans Forster?

A. On Exhibit 239?

Q. Yes. A. Yes, sir, there is.

Q. What did you do concerning that check?

A. I looked on the deposit tickets of Account 198, Mr. Forster's personal savings account, to determine whether or not it was deposited in that account.

Q. Was it deposited?

A. Yes, it was. I looked at the Arctic Gardens record to determine how it was charged, and I was unable to clearly establish what it was charged for. However, I discussed it with Mr. Taylor and he told me it was paid for interest on a loan **which** Mr. Forster had made to Arctic Gardens, Incorporated.

Q. Did you——

(Testimony of Ira Eppler.)

A. (Interposing) I also examined Mr. Forster's tax returns. This check, by the way, is dated December 31, 1945. I examined Mr. Forster's tax return to learn whether or not it was listed as an interest item on [545] his tax return.

The tax return, however, showed—I think I probably need the exhibit which shows details of the 1945 return. It is Mr. Forster's return.

Mr. Patten: No. 6.

A. (Continuing): The tax return actually lists, on line 3: "Enter the total amount of your dividends and interest, including interest from Government obligations," and so forth—on that line, there was listed an amount of \$2,993.45. It does not give any details in the tax return as to what the breakdown of those interest items are.

Also——

Q. (By Mr. Obenour interposing): What exhibit now is that item in?

A. This is Exhibit 6. Also, in this same tax return, in the schedule of Capital Gain, there is listed what appears to be interest on Government bonds.

Q. Did you——

A. (Interposing) However, this particular item could not be identified on the tax return itself. So, thereafter, I examined the work papers [546] of Mr. Taylor, which he apparently used in preparing this tax return, which does give a breakdown of the interest items. I have it here, I believe. Yes. Shall I continue, or——

(Testimony of Ira Eppler.)

Q. (Interposing) Would you identify what it is, please?

Mr. Griffin: Let's get a number, first.

A. This is a——

The Court: (Interposing) Just a moment. We will mark it.

The Witness: Oh.

The Clerk: Plaintiff's Exhibit No. 257 marked for identification.

(Plaintiff's Exhibit No. 257 marked for identification.)

Q. (By Mr. Obernour): I hand you Plaintiff's Exhibit 257 and ask you if you can identify it, sir?

A. Yes, sir.

Q. What is it, please?

A. It is a combined profit and loss, and balance sheet, headed Alpine Dairy Profit and Loss, December 31, 1945, and balance sheet, December 31, 1945.

Q. Do you recognize the handwriting on it?

A. Yes, I believe it is Mr. Taylor's.

Q. And did you say there were—would that be a finished paper, or work paper, or what would be the description in the terminology that you have there?

A. It is a year-end work paper. [548]

* * * * *

The Clerk: Defendants' Exhibit No. A-10 marked for identification.

(Defendants' Exhibit No. A-10 marked for identification.)

(Testimony of Ira Eppler.)

Mr. Le Sourd: Mr. Eppler, handing you Defendants' Exhibit A-10 for identification, can you state what that is?

Mr. Obenour: Again, I would object if [551] the Court please, as improper voir dire.

The Court: Does this matter, have some relation as to how this matter came into possession?

Mr. Le Sourd: Yes. This matter is laying the groundwork, your Honor, for an objection to this paper, along with these other working papers as being improperly in the possession of the Government.

The Court: It seems to me it is proper voir dire.

Mr. Obenour: If the Court please, Counsel has indicated previously as to a motion. It would appear it would be heard as his motion, and not as to the voir dire.

The Court: If you don't wish to offer the exhibit, and if you want to withdraw it, the Court will cut off the examination.

Mr. Obenour: No, sir; we will offer it.

The Court: That is what voir dire is. If it has anything to do with the admissibility of this document, I assume it is proper, and on the showing made, there may be some question so I will overrule the objection.

Mr. Le Sourd: I think I asked the witness if he could state what Exhibit A-10 for identification is.

The Witness: Yes, sir.

Mr. Le Sourd: And what is it?

The Witness: It is a memorandum of a series

(Testimony of Ira Eppler.)

of interviews that I had by telephone and in person on September 6, 1950, with Mr. E. P. Tremper, C.P.A., connected with Touche, Niven, Bailey and Smart; with Mr. George Kachlein, Attorney, and second interview with Mr. E. P. Tremper, all on the same day.

Mr. Le Sourd: Did these interviews——

The Witness (Interposing): Excuse me. Attached to it is a summons which I served on Mr. Tremper requiring him to produce this particular paper along with others.

Mr. Le Sourd: These interviews that are covered in Defendants' Exhibit A-10 for identification, had to do with the production of Plaintiff's Exhibit 257, along with other working papers of Mr. Taylor?

The Witness: No, it rather summarizes the substance of the conversations that I had with those three people.

Mr. Le Sourd: Those conversations were with regard to the production of working papers of Mr. Taylor? [553]

The Witness: I think it would be more accurate to say it was with reference to my asking them to give them to me.

Mr. Le Sourd: Yes, but to give working papers, including Plaintiff's Exhibit 257?

The Witness: That is right.

Mr. Le Sourd: And Defendants' Exhibit A-10 for identification, you knew to be a correct state-

(Testimony of Ira Eppler.)

ment at the time of what transpired on that day in this respect?

The Witness: Yes, sir.

Mr. Le Sourd: I will offer it, if the Court please.

The Court: I don't know that it is admissible, if there is any objection.

Mr. Obenour: We would object to the admission of the document at this time, if the Court please.

The Court: You might state the grounds for your objection, Mr. Obenour.

Mr. Obenour: The matter is immaterial and irrelevant to the entrance or admittance of Exhibit 257, and that the manner in which it was obtained, is not shown. It is simply a basis of conversations he had with certain individuals. It [554] would have no bearing to the admittance upon identification previously given by this witness of Exhibit 257.

The Court: You have heard the objection, Mr. Le Sourd. Do you have any——

Mr. Le Sourd: (Interposing): Yes, your Honor.

The Court (Continuing): ——reply?

Mr. Le Sourd: I do. This goes to the question of whether or not this particular exhibit now offered by the Government together with other working papers and personal papers of the Defendant Taylor were properly and are properly in the hands of the Government, and as to whether they may be introduced into evidence in this case.

This is in connection with our motion which was made the other day, which your Honor said should be raised by objection to the evidence, and we are

(Testimony of Ira Eppler.)

objecting to the admission of Plaintiff's Exhibit 257 for identification on the ground that the Government improperly has possession of this document and the other working papers of this Defendant, and cannot properly use them as evidence in this case, and the evidence now offered is as to how the Government came into possession of the documents.

The Court: Of course, it is a memorandum [555] in the possession—the record doesn't show who prepared it—a memorandum in the possession of this witness which relates to conversations. I don't know that that makes it admissible if objected to. I don't know on what basis the Court can admit it.

Mr. Le Sourd: If your Honor please, the witness has testified that these conservations on this day had to do with the securing by him of this document, along with other documents, and the substance of this memorandum we believe will show the manner in which these documents were secured by the Government.

The Court: That may all be very true, but that still does not make them admissible, Mr. Le Sourd.

Mr. Le Sourd: Well, the witness has stated that this was reduced to writing at the time by himself, and that it was a correct statement of what happened at the time. I can ask, of course, the witness to testify orally by refreshing his recollection but it seems to me the statement itself——

The Court: (Interposing) Of course, if objected to, the Court must be governed by rules of admissibility, and I think the objection is well

(Testimony of Ira Eppler.)

taken, at least, at this time, so far as the memorandum [556] is concerned.

Mr. Le Sourd: Very well, your Honor.

Mr. Griffin: While the Court has ruled on the objection, so that the record may be clear as to Exhibit A-10, I object to the two-sheet memorandum. I do not object to the subpoena attached. He is offering two documents. The subpoena shows how these documents were obtained, and from whom.

The memorandum, of course, is inadmissible.

The Court: He mentioned more or less in passing the subpoena, or whatever the form is. Is that an original document, or some official document of some kind?

Mr. Le Sourd: Well, my offer, if the Court please, would only go to the two-page memorandum.

The Court: If that is offered, I take it that that is all that is involved, and the Court will sustain the objection at this time.

Mr. Le Sourd: Mr. Eppler, can you from your recollection, refreshed by Defendants' Exhibit A-10, tell us what you first did on September 6, 1950, with regard to securing the working papers of Mr. Taylor in Plaintiff's Exhibit 257?

Mr. Obenour: Again, if the Court please, I would object to this type of voir dire as to the [557] questions and the manner in which it was obtained as to any identification of the original offered. It has been identified without reference to A-10 or other documents.

(Testimony of Ira Eppler.)

Having been identified, it is a question of admission.

Mr. Griffin: I think the objection is broader than that on the part of the Defendant Forster. This is not a matter of voir dire. There was offered A-10, and attached to A-10 is a subpoena. I suggest to your Honor, like any other document, when the papers were obtained by subpoena primarily, or of other instance of any kind, nature, or description, that is how they were obtained—by subpoena, and if there is to be argument on that, it is a legal argument in the absence of the jury.

The Court: Ordinarily, I think you might have offered proper voir dire, but where the question, as the Court has been advised, goes to the possession of these documents, it may—it is quite possible the Court would permit extended examination.

It may be, Gentlemen, that there is no dispute as to how possession came about. Is that possible?

In other words, rather than go on here——

Mr. Le Sourd: (Interposing) If it is conceded——

The Court: (Continuing) ——and spend time on examination, maybe we can agree as to that, because I take it if the facts are such as to render the documents inadmissible as a matter of law that would be done. Mr. Le Sourd?

Mr. Le Sourd: If the contention is that this was secured by virtue of subpoena, then the facts are in dispute. We believe the evidence through this

(Testimony of Ira Eppler.)

witness will show that the—these papers were secured actually by a voluntary act of Mr. Kachlein, and that the subpoena, we will then argue this matter of law, that the subpoena is of no force and effect in this case and that it was only through this voluntary act that these were secured.

The Court: Is this a matter which we might go into further in the absence of the Jury to some advantage?

Mr. Le Sourd: Yes, I think some of the evidence we will offer will be by other witnesses also on this point, and it might very well be taken up in that manner.

The Court: You might make an offer of proof here [559] which will determine the advisability of determining whether or not we can go into the examination you want on voir dire now.

Mr. Le Sourd: Yes, and you wish an offer of proof at this time?

The Court: I think we might excuse the Jury. It is about recess time, and then we can proceed with that.

Mr. Le Sourd: Very well.

The Court: Ladies and Gentlemen of the Jury:

It is now the mid-afternoon recess time. The Court calls your attention to the admonition given on previous occasions, and asks that you heed it on this occasion. You may now be excused.

(Whereupon, the Jury retired from the court room.)

(Testimony of Ira Eppler.)

The Court: Before we take the recess—you may step down, if you wish.

(Whereupon, witness withdrew from the witness stand.)

The Court: You might state what you would offer to prove in further examination, Mr. Le Sourd, on voir dire.

Mr. Le Sourd: Very well, your Honor. We will offer to prove by the witness now on the [560] stand, and by the testimony of L. Hicks Taylor, that the working papers of Mr. Taylor, of which this Plaintiff's Exhibit 257 for identification was a part, had been left by him at Issaquah, with the intention of securing it when he returned from confinement, and that on September 6, 1950, before his return or, prior to September 16, 1950, or, put it this way—that on September 6, 1950, Mr. Eppler called Mr. Tremper of Touche, Niven, Bailey and Smart, asking for possession of these documents, and Mr. Tremper exhibited some reluctance; that shortly thereafter, a few minutes thereafter, Mr. Eppler received a call from Mr. George Kachlein; that Mr. Kachlein objected to the turning over of these documents at first, on the ground that he had an attorney-client relationship with Mr. L. Hicks Taylor, and that these were his working papers, and indicated his understanding that these working papers would be privileged in his hands, and that he did not desire to turn them over.

We will show that further conversation resulted with regard to the possible seizure of these docu-

(Testimony of Ira Eppler.)

ments by Mr. Eppler; that finally, Mr. Kachlein said, if Mr. Eppler would take his summons down to Touche, Niven, Bailey and Smart; that Kachlein would [561] take the responsibility and order them turned over to Mr. Eppler.

We will show that Mr. Eppler in response to that went to the accounting firm and secured the papers.

We will further show that at that time Mr. Kachlein had on file with the Bureau of Internal Revenue a power of attorney authorizing him to represent L. Hicks Taylor, and that he, at no time, secured from Mr. Taylor any consent to the turning over of these documents either to Mr. Forster's accountants or to the Government, and at no time did he consult Mr. Taylor about it, nor secure any waiver by Mr. Taylor to the privilege which attached to these documents.

Mr. Griffin: Will counsel broaden his statements to directly specify that they were left by Mr. Taylor at the Issaquah Creamery Company office?

Mr. Le Sourd: That is correct.

We have a memorandum we have prepared on the law on this subject.

It will be our position, your Honor, that when these papers—that the facts which we have outlined will show that Mr. Kachlein was in control of these documents, and we will argue—— [562]

The Court: (Interposing) These documents were in the possession of the Issaquah Creamery?

Mr. Le Sourd: Not at this time, no, your Honor.

(Testimony of Ira Eppler.)

The Court: "At this time," you mean on September 6th?

Mr. Le Sourd: 1950. These documents were in the hands of Touche, Niven, Bailey and Smart, Mr. Forster's accountants.

The Court: But they were left by Mr. Taylor with Issaquah Creamery before they were turned over to the accountants?

Mr. Le Sourd: That is right, with the intention, our evidence will show, that they were left there for the purpose that they would be available, if necessary, to use them while Mr. Taylor was in prison, and that he intended to pick them up on his return; and that thereafter, the evidence, we believe, will show that they came under the control of Mr. George Kachlein at the time when Mr. Kachlein had on file with the Bureau a power of attorney authorizing him to act as Mr. Taylor's attorney, and that he recognized that capacity in these conversations with Mr. Eppler on that day with regard to these exhibits. [563]

The Court: All right. Now, this covers the offer of proof. Does that cover it?

Mr. Le Sourd: That covers my offer of proof.

The Court: As to that offer of proof, in the event—is there any factual dispute?

Mr. Obenour: Yes, sir.

The Court: From the Government's point of view?

Mr. Obenour: Yes, sir. He has stated material

(Testimony of Ira Eppler.)

that would be brought in unless objected to by the Government, on this witness.

The Court: Well——

Mr. Obenour: Actually, there would be dispute as to any cooperation of any kind by anybody.

The Court: In other words, you would not admit it, but do you say the facts are different, other than you do not admit?

Mr. Obenour: Yes, sir; we would. The position of the Government is that they were obtained from the accounting firm through the summons which was issued, and not through the result of any conversation with anybody as to cooperation, or any other term that might be employed, as to the manner in which they came into the Government's possession. [564]

The Court: Your statement then would be that the proof would show that these documents were produced as a result of a subpoena, or summons, to appear and produce books?

Mr. Obenour: Yes, sir.

The Court: It is not a subpoena.

Mr. Patten: It is a summons.

Mr. Griffin: Summons.

Mr. Obenour: It would have been, if the Court please, in the period of time in the possession of the Government, it would be untimely to——

The Court: (Interposing) That isn't the question now.

Mr. Obenour: All right, sir, but it would appear again if Mr. LeSourd is presenting this matter in

(Testimony of Ira Eppler.)

defense of his motion, it would be the Government's position that it would be hearing of evidence regarding the motion he made, and not the matter of the voir dire of the Government's witness at this time.

The Court: Anything else?

Mr. Griffin: Only this:

So far as we are concerned, we certainly dispute very definitely the legal implications as claimed because these papers—these working papers admittedly under the offer of proof are left with [565] the Issaquah Creamery Company. It was left there with them at which time Mr. Taylor was an officer, not only the accountant, but secretary-treasurer, of that corporation and practically of all of these corporations referred to in the summons, and all these papers were left there.

From that time on, it was the business of Issaquah Creamery Company as to what happened to these papers, manifestly, they were turned over to the accountants. They were then property of the Issaquah Creamery Company, irrespective of the general rule that the paper belonged to the accountant. This is the secretary-treasurer accountant.

Mr. Le Sourd: We would desire to present argument on that, and also to present testimony that Mr. Taylor was paid nothing as secretary-treasurer and was paid as an accountant in this City, and we have cases going to his rights.

The Court: At this juncture, Gentlemen, where there is an offer of proof made as to how the docu-

(Testimony of Ira Eppler.)

ment came into the possession of the Defendant—I mean of the witness, of the Government in this case, if the Court refuses to hear or to take testimony as to that, is the legal effect of that an admission of the offer? In other words, if I proceed now with an offer of proof having been made [566] as to how possession was obtained, if I refuse to accept it and proceed on the facts and deny that—admit the document, is that not equivalent to admitting the fact, admitting the facts as alleged in the offer of proof?

Mr. Griffin: I am inclined to think that if you refused the offer of proof, the implication is that the facts are admitted, but rejected in any event, as a matter of law.

The Court: Yes, as a matter of law.

Mr. Griffin: Like a demurrer.

The Court: Like a demurrer. You don't admit except for the purpose of the offer, so that is the posture of this question, and the issue then becomes one—and on that basis, I will hear you briefly—in other words, I think the objection of the Government now has to be made just as it might in view of the offer of proof.

Mr. Le Sourd: May I add this to my offer of proof, with the Court's permission?

That the evidence will show that the Government Agent receiving these papers knew—let me correct that. I omitted to form my offer of proof.

Our proof will show that Mr. Kachlein had previously stated to this Government Agent who [567] received these papers that if Mr. Forster had any

(Testimony of Ira Eppler.)

tax difficulties, it was Mr. Taylor's fault, or words to that effect. We wish to add that to our offer of proof, and that by reason thereof, this agent knew that Mr. Kachlein was taking a position adverse to Mr. Taylor, and those documents were turned over to him, and further, that he knew that Mr. Taylor was in the penitentiary and unable to protect himself in this regard.

The Court: It is clear, is it not, that the documents here involved are work papers in connection with the Issaquah Creamery?

Mr. Le Sourd: I think it is the Alpine Dairy.

The Court: Alpine Dairy?

Mr. Le Sourd: Yes.

The Court: And at that time, the Alpine Dairy was the——

Mr. Patten: (Interposing) Sole proprietorship.

The Court: Sole proprietorship of Mr. Forster?

Mr. Griffin: Yes.

The Court: The Court will take a fifteen-minute recess.

(Whereupon, at 2:52 o'clock p.m. a recess was [568] had in the within-entitled and numbered cause until 3:10 o'clock p.m., March 3, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: I will hear briefly from the Government and also from Mr. LeSourd on this issue now, and we will consider the offer and likewise any other legal objections that may—or ground that

(Testimony of Ira Eppler.)

may have a bearing on the issue.

Mr. Patten: Your Honor, the Government's offer is very simple—that Exhibit 257 is the property of Mr. Hans Forster. The strongest evidence of that fact is that in April, 1950, Mr. Taylor delivered this particular document along with other papers to Mr. Forster, which is strong evidence that he intended to relinquish whatever property he might have claimed to it.

It is secondly our position that this document is no ordinary work sheet, that this document is, in effect, the records—the primary records—or at least the summary records—of Alpine Dairy. It is not a work sheet in the normal sense of the word, but a document which is prepared as a step in posting a finished piece of paper. [569]

If, for instance—and I haven't examined the documents myself—if we get a profit and loss statement as of March 31, 1945, or if we need a balance sheet of Alpine Dairy as of December 31, 1945, this document 257 is the only one in existence, and you can look all through the book and you cannot find any other place a balance sheet as of December 31, 1945, nor can you find a profit and loss statement as of December 31, 1945.

So that this is, in effect, the books and not a document which was prepared as a step in preparing the final entries in the books.

Thirdly, our position is that regardless of how the Government obtained this document, it was by

(Testimony of Ira Eppler.)

entirely proper procedure and is entitled to make use of it as it desires.

Mr. Le Sourd: Counsel says that no place else is there a balance sheet and profit and loss statement. Of course, it is on the income tax return for this year, and that balance sheet and profit and loss statement—the balance sheet appears on—let's see, this is a personal return—I was thinking of the corporation. I believe it is in the return. We can look at it. I think it goes into the return in every case, and this is the notes and [570] working paper Mr. Taylor used in preparing that return. That is the purpose of it, from the information in the books with the various assets, liabilities and expenses.

This is the same as any accounting working paper that I have ever seen, and the decisions are that it is the personal property of the accountant who makes it.

Now, the leaving of it out at Issaquah, the evidence will show Mr. Taylor was going to be gone for a number of months. In case of an audit or something like that, perhaps someone might want to refer to it, and he left it there so that it could be reached and available, but certainly there is no showing, and the evidence will show, that he intended to repossess it when he came back. He certainly in no way transferred his title to it, and under the cases cited in our memorandum, he has the continuing right to it as against Mr. Forster.

I would say further that when that document—

(Testimony of Ira Eppler.)

when this document, his own working papers, personal papers, came under the control of the attorney who had power of attorney on file for him before the Bureau of Internal Revenue at a time when there was a criminal investigation in process in which Mr. Taylor was [571] involved, that the privilege that Mr. Taylor had with regards to this personal document reasserted itself at that time, and it became Mr. Kachlein's duty at that time to assert that privilege, unless he were authorized by his client not to assert, and he secured no such authorization in this case.

Furthermore, we say that when the Government agents knowing as they did that Mr. Kachlein was representing both Mr. Forster and Mr. Taylor, knowing as they did that Mr. Kachlein had taken a position adverse to Mr. Taylor, coming in as we will show knowing that Mr. Taylor was in the penitentiary, he was coming out in four days, on September 10th, and they came in four days before he got out and came into position to physically assert his own privilege, they go down and take these documents by arrangements with Mr. Kachlein, whom they know to be adverse in interest, and we say in that situation they have no valid waiver of the privilege as to these documents and that they should not be introduced in evidence in this case.

The Court: Mr. Griffin?

Mr. Griffin: If the Court please, at some stage, and I assume that will be after Mr. Taylor takes

(Testimony of Ira Eppler.)

the witness stand, I presume it will take about two [572] days of testimony upon this issue.

Now, my position at this time is this: I may say to you primarily because it is aside from the point that these papers never came into possession of Mr. Kachlein as attorney either for Mr. Forster or Mr. Taylor as of September 6, 1950, which is the day in question, but my position primarily is this—with the books in evidence, and the testimony that the ledgers were all kept in the office of Mr. Taylor, and the other books at Issaquah, or other places, but they are in evidence, they will show that there never was a compensating entry made in the profit and loss statement or anything else in them by which you could reach any conclusion without the so-called working papers of Mr. Taylor.

My primary position is that the so-called working papers of Mr. Taylor, of which this is an actual profit and loss report and not a working paper, is just as much a part of the records of Alpine for this one, or of Issaquah, as the ledger or the journals.

Actually, it is because that is the situation that Mr. Taylor in leaving took the ledger and these documents and the inventory out to Issaquah [573] Creamery and deposited them there in the possession of his client, that client having no documents equalizing these, or copies of them and which were necessary in carrying on such bookkeeping as they had, and which had to be carried on, and that when he took them there, and left them there,—I don't

(Testimony of Ira Eppler.)

care what his secret intent was, or anything else—he had turned over to his client, as well as the corporations of which he was officer, but to his client, these papers.

From that time on, he lost all control of them, and right to them. They weren't delivered conditionally. It was a complete delivery. He lost all control of them, or right to them, and what happened thereafter, so far as the Government obtaining them, which is by summons which, if denied, becomes a subpoena, as I understand the procedure, and that is the position we find ourselves in now. It is not a matter of taking evidence, or a matter of voir dire, and these records show they were left there. Anything else said thereafter, even like the surplusage in a demurrer, is utterly immaterial to any issue before the Court.

The Court: It is stipulated they were left there?

Mr. Griffin: That is correct.

Mr. Le Sourd: Our offer of proof will include that Mr. Taylor will testify he left them there merely while he was gone with the intention of repossessing them upon his return.

The Court: Gentlemen, I feel that there are—that there may be several reasons why the documents might be admissible, but I think this is controlling—I can't help but believe that the matter is not timely raised. It may be, Mr. Le Sourd, as you indicated the other day, that you were not fully informed of all the facts prior to the last month or two, or what ever that is, but the fact of the matter is, is it not, that these documents, whatever they

(Testimony of Ira Eppler.)

were, have been in the possession of the Government since 1950. This Indictment was filed, I don't know the date, but it was in 1952, was it not?

Mr. Le Sourd: I think it was, sometime after that, yes.

The Court: Yes. Now, certainly there is no secret about the Government's possession of these documents?

Mr. Le Sourd: No.

The Court: Therefore, it seems to me that [575] just as if there was a motion to suppress in a similar situation, it does not necessarily involve privilege but wrongful procedure in admitting in this case, so far as the Government is concerned; but nevertheless, the same rule will apply as to time limit, and we are now engaged in the course of trial, and I don't think the Court should properly consider it upon that ground, first, and the other grounds will be aside from that.

Mr. Le Sourd: May I speak to that ground, your Honor?

The Court: Yes.

Mr. Le Sourd: That may be true where all the facts were in our possession previously, but, as I said, where things of this sort happen between parties adverse in interest to us, the facts are not available to us. It was for that reason that I asked in open court the other day for the right to talk to Mr. Eppler on this thing, and it was only a few days ago, in talking to him, that I found that Mr. Kachlein actually took it upon himself to order

(Testimony of Ira Eppler.)

these things voluntarily surrendered to Mr. Eppler.

Now, we did feel prior to that time that by taking these documents out to Issaquah, there may have been a waiver of that privilege, but when [576] we found that they—this evidence the other day that they had come under the control of Mr. Kachlein, and control is the test,—not possession, but control is the test,—when we found that they were under his control, and he made the decision to turn these papers over to the Government without refusing to comply, which could have been done without any legal consequences whatsoever, and certainly for four days, when Mr. Taylor could have acted for himself, but when we found out Mr. Kachlein took the responsibility and assumed the control over, and instructed that these be turned over to Mr. Eppler, then we felt that we had the perfect right at that time to re-assert that privilege, and that information has come to us only in the course of the trial, and the motion could not have been made prior thereto.

The Court: Of course, before proceeding, we must admit, for the purpose of this discussion, matters you assert, Mr. LeSourd, in your offer of proof, but the fact, nevertheless, is that these documents were in the possession, and it is not disputed they were in possession of the Government since 1950. Regardless of any relationship between Mr. Taylor and Mr. Kachlein, regardless of what Mr. Kachlein may have done, Mr. Taylor knew about those [577] documents, and they were in the possession

(Testimony of Ira Eppler.)

of the Government, and privilege is something that must be claimed. Privilege is not something that a person can willy-nilly treat and then at some late date say "I think I will assert that privilege," which certainly has been ignored and waived for quite some time, and so I am going to rule that the matter is not timely raised, not by any action of Counsel, because Counsel might not have known, but I don't think privilege is something that must depend upon a man being advised of his legal rights.

Mr. Le Sourd: May I state to your Honor that as to any of these work papers that we have voluntarily made statements concerning or in any way waived the privilege during this period of time, we do not intend to object, but the balance of them in no way have we waived any privilege.

That privilege adheres to a defendant in a criminal case under the Fifth Amendment, and the question becomes only one of timeliness and that must be determined under the light of the information available to us, and that information became available only during this trial, and to speak of the waiver of privilege, there is no affirmative duty to waive privilege, the privilege stays with him. [578]

The Court: But the privilege must be asserted.

Mr. Le Sourd: The privilege must be asserted at the proper time, yes, and we say that the proper time to assert is when he has information that there is a privilege that can be asserted. And when the issue comes up properly in the Court.

(Testimony of Ira Eppler.)

Now, if we had had that information prior we could have moved for return of these documents prior to the trial, but we did not have it. At that time, he had assumed that the privilege——

The Court: (Interposing) The only thing you didn't know, as I understand it possibly is the relationship or what action might have been taken by Mr. Kachlein.

Mr. Le Sourd: That is correct, yes.

The Court: But there was no question of the documents being in the possession of the Government?

Mr. Le Sourd: No.

The Court: And Mr. Taylor knew that, I assume?

Mr. Le Sourd: Yes, certainly he knew that.

The Court: That is the matter, it seems to me, to be more controlling, namely, that these—— [579]

Mr. Le Sourd: (Interposing) That knowledge, of course, wasn't sufficient to permit us to take any action, because if those papers had come by virtue of being out at Issaquah, without having come back into control of the attorney for Mr. Taylor, perhaps then there was no privilege, and so, for that reason, we had no basis for taking action until——

The Court: (Interposing) As I stated, it is a question of whether or not those papers—I read briefly your memorandum—but there is a serious question of whether they are personal to Mr. Taylor, but, nevertheless, if I stand on the first ground taken that is of no moment.

(Testimony of Ira Eppler.)

Mr. Le Sourd: If it were, I would like to be heard on that matter.

The Court: So the Court is ruling then that the matter is not timely raised, and, therefore, the matter will not be considered further.

Mr. Le Sourd: May the record expressly show an exception?

The Court: Yes, it certainly may. [580]

* * * * *

Q. (By Mr. Obenour): I hand you what has been marked as [587] Plaintiff's Exhibits 170, 171, 172, and 173, which have been identified as receipts for cash paid to employees of Mr. Forster by Time Oil Company.

Did you do anything in regard to those exhibits—rather, to those items in that exhibit?

A. Yes, I did.

Q. What did you do in regard to those exhibits?

A. I contacted Mr. Sam Green of Time Oil Company, and asked him to supply these to me.

Q. When did you first hear about the cash that was paid in connection with Exhibits 170, 171, 172 and 173?

A. The first time I met Mr. Forster on August 29, 1950, he mentioned that he had received some rebates from Time Oil Company which had not been reported in his tax return.

Q. What did you then do upon contacting Mr. Green?

A. I went over these records with him and gen-

(Testimony of Ira Eppler.)

erally discussed the matter with him to learn as nearly as possible what the amounts were.

Q. What was the total of the receipts for the cash paid by Time Oil Company to Mr. Forster for the years 1946 to 1949? [588]

A. The ones reflected in the total—the total reflected in these receipts is \$11,597.41.

I should further clarify that, I believe, by saying that some of these refer to Issaquah Creamery, as well as Alpine Dairy. So, technically, I suppose, the ones to Issaquah Creamery would be the income of Issaquah Creamery.

Mr. Griffin: Just a moment, if the Court please: I move the latter portion be stricken as a conclusion. I don't object to the amount. It has already been testified to.

The Court: The last portion of the answer may be stricken.

Q. (By Mr. Obenour): Was this amount of \$11,597.41 reported upon the respective tax returns for Mr. Forster?

A. It does not appear to be, no, sir, and I have been told by Mr. Forster that it wasn't.

Q. Did you talk to Mr. Erickson about the Time Oil Cash Payments? A. Yes, sir.

Q. What did Mr. Erickson say about the money received?

A. He said that at times Mr. Forster would hand him money representing Time Oil Company rebates [589] and ask him to list it on deposit tickets to Mr. Forster's personal savings account

(Testimony of Ira Eppler.)

at the Issaquah Bank, and at the same time, to check the records of purchasers from Time Oil Company, both by Alpine Dairy and Issaquah Creamery to determine that they were getting the full amount of the rebate payment.

Q. Did Mr. Erickson say what he had done pursuant to those instructions? A. Yes.

Q. What did he say he had done?

A. That he had carried out the instructions.

Q. Did Mr. Erickson ever say whether he had——

Mr. Keesling: (Interposing) I object to leading the witness.

The Court: It would appear to be.

Mr. Obenour: Pardon, sir?

The Court: It would appear objectionable. However, I can't tell until you have completed the question. You must know, of course, you can't lead a witness.

Q. (By Mr. Obenour): (Continuing) Did Mr. Erickson make any further statement concerning his own determinations of the amounts of money that were received? [590]

Mr. Keesling: I object to leading the witness.

The Court: Would you read the question, Mr. Reporter?

(Whereupon, preceding question was read by the reporter.)

The Court: At any particular date, if there was anything further, Mr. Erickson said that you haven't covered?

(Testimony of Ira Eppler.)

The Witness: Yes, sir; there was.

A. He said that the amount did check, and I asked him why he had failed to record in the corporate books the amounts which was paid to the corporation on those rebates since he knew that it was corporate income by virtue of having checked the record.

Mr. Griffin: Just a moment.

Mr. Keesling: I object.

The Court: Mr. Eppler, you may only state what Mr. Erickson said. Did he say he knew it was, as you have related?

The Witness: Yes, he did.

The Court: Just as you have related?

The Witness: I don't believe he used those exact words, but that is the substance of what he said.

* * * * * [591]

Q. (By Mr. Obenour): Did you make any investigation concerning the manner in which personal expenses were charged upon the books of Alpine Dairy?

Mr. Keesling: I object to the form of the question. [592]

Mr. Griffin: I object to the form of the question as calling for a conclusion.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing) Did you make any further investigation of the books and records of Alpine Dairy? A. Yes, sir.

Q. What else did you do then in your investigation?

(Testimony of Ira Eppler.)

A. I took a list of personal—of checks which had been issued by Alpine Dairy which Mr. Erickson had prepared. I handed him the list. It also included a list of checks issued by Issaquah Creamery and we went through a number of the items on it. He, in preparing this list, had set out what these items were. That is, the payee, what his understanding of the actual purpose was, and the way they were charged in the books by him, and the amounts of the checks.

I took his list and went through the books themselves to verify whether or not they actually were charged as he had stated they were.

At least one of those checks I also examined and found that it was listed on a deposit [593] ticket to account 198 and deposited to Mr. Forster's personal savings account.

Q. I hand you what has been marked for identification as Plaintiff's Exhibits 162, 163, 164, 165, 166, 167, 168, 169, 196, and 197, which have been identified as the checks received by the respective payees as premiums on insurance of Mr. Forster.

Have you done anything in regard to those exhibits? A. No, sir.

Q. What did you do in regard to those exhibits?

A. I verified that they were listed in the books of Alpine Dairy and Issaquah Creamery as Mr. Erickson had stated they were on his list.

Q. How were they listed?

A. They were charged as various business ex-

(Testimony of Ira Eppler.)

penses, I believe, in each instance as insurance expense.

Q. Was there anything in the manner in which they were charged on the books to show that it was not a normal business expense?

A. No, sir; it appeared to be an ordinary business expense from the books themselves.

Q. Was this a proper business expense?

Mr. Griffin: Objected to. [594]

Mr. Keesling: Objection.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Did Mr. Erickson make a statement as to his knowledge of the purpose of these checks? A. Yes, sir.

Q. What did Mr. Erickson say?

A. He said they were personal expenses of Mr. Forster. I think that I should clarify the point. I haven't examined all of these checks. I believe there are a few included in this group which did not appear on Mr. Erickson's list.

(Whereupon, there was a brief pause.)

Q. (By Mr. Obenour): I hand you what has been marked as Plaintiff's Exhibit 178, 198, 174, 175, 185, and ask you if you did anything regarding those exhibits? A. Yes, sir.

Q. What did you do in regard to those exhibits?

A. I likewise verified that these were charged in the books as Mr. Erickson's books stated that they were.

Q. And how were they charged? [595]

(Testimony of Ira Eppler.)

A. I looked at the books and they were all listed.

Q. And how were they charged on the books?

A. May I refer to the list that I have been talking about?

Q. Yes.

A. I don't have it. I believe you have.

Mr. Griffin: Just a moment. Did I understand the witness to say that he wanted to look at a list?

The Court: It is my understanding.

Mr. Griffin: Is that the list prepared by Mr. Erickson?

The Witness: It is a copy of such a list, yes, sir.

Mr. Griffin: I would like to have it marked for identification, if the Court please, it having been referred to before.

The Court: Is this it here?

Mr. Obenour: Yes, sir.

Mr. Griffin: All right, fine.

The Clerk: Defendants' Exhibit A-11 marked for identification.

(Defendants' Exhibit A-11 [596] marked for identification.)

Q. (By Mr. Obenour): I hand you what has been marked as——

Mr. Obenour: If the Court please, we would offer this ourselves. I didn't realize how it was marked.

Mr. Griffin: It is all right, just so that we get it.

The Court: The question is, what is it?

The Witness: It is a list—rather, I should say, a copy of a list prepared by Mr. Erickson of per-

(Testimony of Ira Eppler.)

sonal expenses paid by Alpine Dairy and Issaquah Creamery.

The Court: Personal expenses of Mr. Forster?

The Witness: That is the way it is headed, at any rate.

Q. (By Mr. Obenour): Is that the list that you referred to as having discussed with Mr. Erickson? A. Yes, sir.

Q. And that list was prepared by whom?

A. Well, it was prepared in part by me.

Q. Yes.

A. But it is a copy made from Mr. Erickson's list, and has some additional items on it which did not appear on Mr. Erickson's original list, however.

Q. Referring to that, to this exhibit, Defendants' Exhibit A-11, can you refresh your recollection as to the manner in which the exhibits 178, 198, 174, 175, and 185 were charged on the books of Issaquah, and Alpine Dairy? A. Yes.

Q. How were they charged?

Mr. Griffin: I gather from this question he is using for identification A-11, if the Court please, which is not in evidence.

I thought Counsel wanted it in.

Mr. Obenour: It is to refresh his recollection, if the Court please.

Mr. Griffin: He didn't say he had a recollection.

Mr. Obenour: He said he would like it.

The Witness: I have a recollection. I would like to refresh it, however, from looking at this list.

The Court: You are now using this list to re-

(Testimony of Ira Eppler.)

fresh your recollection, Defendants' Exhibit A-11?

The Witness: Yes.

The Court: You may proceed.

A. I believe that the exhibits representing the dues payments are charged to advertising. [598]

Mr. Moriarty: Which exhibit is that?

The Witness: It includes all these exhibits with exceptions of Exhibits 185, -6 and -7. I believe Exhibit 185 is charged to advertising.

Q. (By Mr. Obenour): Well, that is—as to those, 185 and Exhibits 178, 198, 174, 175 and 185, who were the payees of those checks?

A. Nile Temple, Frank Ostrander, Recorder, Nile Temple, Myrtle Lodge 108, Seattle Commandery, No. 2, Nile Temple, Chapter No. 39, Royal Arch Masons.

Mr. Obenour: We would recess at this time, if the Court please.

The Court: Does that cover the exhibits that are charged to advertising?

The Witness: I believe so. Well, there may be others, but these are charged to advertising.

The Court: Those are the ones you referred to?

The Witness: Yes. I am not sure how exhibits 187 and 186 are charged, without looking at this list, however.

* * * * * [599]

Q. (By Mr. Obenour): Mr. Eppler, I hand you Exhibit 161, which is a group of checks made out to Ed's Kennels, and signed by Mr. Forster.

These checks have been identified as having been

(Testimony of Ira Eppler.)

received by the payee for the training of a hunting dog. Can you state whether or not you have done anything in regard to those checks? A. Yes, sir.

Q. What did you——

Mr. Griffin: (Interposing) Just a moment, if the Court please. The question was these checks were signed by Mr. Forster. My impression is that they are signed by Issaquah Creamery.

The Court: Are the exhibits there?

The Witness: Yes, sir.

The Court: It would appear to be signed by Issaquah Creamery, Incorporated, by Hans Forster.

Mr. Griffin: Yes, your Honor, but they are Issaquah Creamery checks, is the point.

The Court: Yes. Does that cover it? [612]

Mr. Griffin: That covers it, as long as it is correctly stated.

Q. (By Mr. Obenour continuing): Did you do anything in regard to the checks of Exhibit 161?

A. Yes, sir.

Q. What did you do in regard to those checks?

A. I examined the books of Issaquah Creamery to see how they were charged in the books, and I discussed them with Mr. Erickson.

Q. And how were they charged on the books of Issaquah Creamery?

A. They were charged as Plant Expense.

Excuse me. I believe actually the charged account shows it as "Miscellaneous Expense."

Q. I hand you Exhibits 192, 193, and 194, Exhibits 192 and 193 being checks drawn to Thurs-

(Testimony of Ira Eppler.)

ton's Laundry upon Issaquah Creamery Company by Hans Forster, which checks have been identified as having been received by the payee, Thurston's Laundry, for laundry and dry cleaning of personal nature for the Forster family, and 194 which is a check to Thurston's Laundry of the Issaquah Creamery Company and signed by Hans Forster and is dated 6/10/45, in the amount of \$31.77,—

Mr. Griffin: (Interposing) I object to the form [613] of the question, if the Court please.

The witness who identified the checks, did not identify any item in the cleaning bill.

The Court: Objection sustained.

I think, Mr. Obenour, if you will just refer them to the witness, I assume the witness has seen them before, is that correct?

Mr. Obenour: Yes, sir.

The Court: What is the purpose in describing the checks?

Mr. Obenour: To avoid passing them to the jury because they indicated they did not desire to see them until the conclusion, and they would not know what they were by exhibit number, if the Court please.

The Court: Well, if you wish to state what the exhibits are, very briefly, is all right, but to attempt to recall or to recall the testimony, I think, is going beyond a proper statement of what the exhibit is.

Mr. Obenour: Pardon me, if the Court please. It was my best recollection.

Q. (By Mr. Obenour, continuing): Did you do anything in regard to those checks?

(Testimony of Ira Eppler.)

A. Yes, sir. [614]

Q. Did you do anything in regard to those checks? A. Yes, sir.

Q. What did you do?

A. I examined the books of Issaquah Creamery to see how they were listed in the books. I discussed them with Mr. Erickson. I discussed them with Mrs. Thurston. I examined the deposit tickets of account 198, Mr. Forster's personal account, and found that one of them was listed on the deposit ticket and deposited in his personal savings account.

Mr. Keesling: If the Court please, I move to strike the testimony where the witness characterizes account 198 continually as Mr. Forster's personal savings account. It hasn't been established whether it is a business account or what account it is. I think reference to it as 198 is sufficient, because it will be eventually up to the Jury to determine whether it is in fact a business account, or what it may be.

Just "198," identifying the account.

The Court: I don't recall whether it has been established as a personal savings account or not.

Mr. Obenour: I believe that was the original signature card, and testimony of Mr. Jensen, who [615] identified it at the *outside* of the trial.

Mr. Keesling: It is a savings account and in Mr. Forster's name, but whether used as a business account is not otherwise established.

(Testimony of Ira Eppler.)

The Court: You are not representing Mr. Forster in this matter?

Mr. Keesling: No, but my point is, he is making a reference now as to whether or not this was charged on the books concerning Mr. Erickson and each time he refers to 198 and he says it goes to a personal savings account.

In fact, if that account is a business account, it would make a great difference in this case.

The Court: Do you know, Mr. Eppler, from your information, whether that is a personal savings account?

The Witness: Mr. Forster advised me the first time I met him it was a personal savings account.

Mr. Griffin: If the Court please, Counsel handed three exhibits, including 194 and the answer was based on 194 and 194 is not in evidence.

The Court: Any reference to Exhibit 194 may be stricken, and the answer with respect to 194 may be stricken at this time. [616]

Q. (By Mr. Obenour): Can you identify 194, please? A. Yes, sir.

Q. What is 194?

A. It is a check drawn on the Washington State Bank by Issaquah Creamery Company, Incorporated, payable to Thurston Laundry.

Q. Can you identify the signature upon that check? A. Yes, sir.

Q. Whose signature is it?

A. It is Mr. Hans Forster's.

* * * * * [617]

(Testimony of Ira Eppler.)

Q. What did Mr. Erickson say?

A. Excuse me. I keep saying "miscellaneous expense." I am not certain. There was supplied to me a chart of accounts for Issaquah Creamery and for Alpine Dairy. I would like to refer to it, if I may.

Mr. Obenour: I ask that this be marked, please.

(Plaintiff's Exhibit No. 258 marked for identification.)

Q. (By Mr. Obenour): Handing you what has been marked as Plaintiff's Exhibit 258, can you refresh your recollection from that exhibit, or that exhibit for identification?

Mr. Griffin: May we see it, if the Court please?

The Court: Do you wish to see?

Mr. Le Sourd: We would be glad to stipulate that it can be put in evidence, if your Honor please.

The Court: I don't know if you intend to offer it.

Mr. Obenour: We intend to offer it shortly, if the Court please. It makes no difference. We can offer it at this time.

Mr. Le Sourd: This is Mr. Taylor's schedule of accounts set up for the bookkeeping system. I would like to have it in evidence.

Q. (By Mr. Obenour): Where did you receive 258, if you please?

A. I believe Mr. Brody gave it to me.

Q. And what is 258?

A. It is a chart of accounts for Issaquah Creamery and Alpine Dairy.

(Testimony of Ira Eppler.)

Mr. Obenour: We would offer it at this time, if the Court please.

Mr. Le Sourd: No objection.

Mr. Griffin: We have no objection.

The Court: Exhibit 258 may be admitted.

(Plaintiff's Exhibit 258 admitted in evidence.)

Q. (By Mr. Obenour): Handing you 258, to which you had referred, would you be able to refresh your recollection then as to the—— [620]

A. (Interposing) The situation which I previously referred to as charged to miscellaneous expenses in the chart of accounts is listed as account 9, supplies.

The accounting staff at Issaquah Creamery constantly referred to it as plant expenses. The last item that I mentioned was charged to account 9.

Q. And that was what, what exhibit was that?

A. I believe it was Exhibit 187.

Q. Handing you Exhibit 69, which consists of three checks, all to the Washington State Bank, the first being dated February 19, 1947, in the amount of \$2,250 drawn on Issaquah Creamery Company and signed by H. Erickson and C. Neukirchen, and the second to Washington State Bank, 5/25/48, in the amount of \$500, and also on Issaquah Creamery Company and signed, this time, Hans Forster; and the third being Washington State Bank, the payee, on the date of 2/20/47, in the amount of \$2,250 on Issaquah Creamery Company, signed H. Erickson and C. Neukirchen, for

(Testimony of Ira Eppler.)

traveler's checks to the National City Bank of New York.

Did you do anything in regard to those exhibits, please? A. Yes, sir.

Q. And what did you do in regard to those [621] exhibits?

A. I examined the books of Issaquah Creamery to learn in what way they are listed in the books. I discussed these checks with Mr. Erickson. I discussed them with Mr. Jensen of the Washington State Bank. I believe that I discussed Exhibit No. 70, also of Washington State Bank.

Q. How were those checks in Exhibit 69 charged upon the books of Issaquah Creamery?

A. I believe they were charged to Account No. 9, supplies.

Q. What did Mr. Erickson say concerning the three checks in Exhibit 69?

A. He said they were personal expenses of Mr. Forster. I believe he said that the \$500 check was for Traveler's checks, and that the two \$2250 checks were issued for the—to apply on the purchase of stock.

Q. I hand you Exhibit 180 and 181, 180 consisting of four checks drawn on the Peoples National Bank of Washington, the payee in each instance being Klopfenstein's, June 16, 1949, in the amount of \$232.32 and stamped Alpine Dairy, signed Hans Forster; the second dated June 10, 1947, the amount \$248.75, stamped Alpine Dairy, signed Hans Forster; and the third dated April 19, 1946, the [622]

(Testimony of Ira Eppler.)

amount \$65.41 stamped Alpine Dairy, signed Hans Forster; and the fourth, on Exhibit 180, dated August 3, 1945, \$209.86, stamped Alpine Dairy, signed Hans Forster; and 181, a single check to Klopfenstein's, dated 8-9-47, in the amount of \$61.80 of Issaquah Creamery Company, signed H. Erickson, and C. Newkirchen. Did you do anything in regard to these checks? A. Yes, sir.

Q. What did you do in regard to these checks?

A. I examined the books of Issaquah Creamery and Alpine Dairy to see how they were listed in the books and I discussed them with Mr. Erickson.

Q. How were those checks listed on the books of Alpine Dairy and Issaquah Creamery?

A. They were listed under Account 9, supplies.

Q. What did Mr. Erickson say concerning these checks?

A. He said that they were for personal clothing of Mr. Forster.

Q. I hand you Exhibit 151, which is an open account ledger of Hopper Kelly, in the name Hans Forster, Issaquah, Washington, and a receipt or sales slip to Hopper-Kelly to Mr. Hans Forster, Issaquah, Washington, one R. C. A., 8 T 270, amount \$579.50, and other entries for the total of \$678.66. [623] Did you do anything in regard to 151? A. Yes, sir; I did.

Q. What did you do in regard to Exhibit 151?

A. I discussed this with Mr. Forster and with Mr. Erickson. I also examined the books of Issa-

(Testimony of Ira Eppler.)

quah Creamery to see in what way the check issued in payment of this was charged in the books.

Q. How was the check issued in payment of Exhibit 151 charged on the books of Issaquah Creamery?

A. I believe it was listed to Account 9, supplies.

Q. I hand you Exhibit 228, three checks, Jensen and Nielsen, in the amount, first, August 22, 1946, in the amount of \$46.74, stamped Alpine Dairy, signed Hans Forster; the second, Jensen and Nielsen, the amount \$615, stamped Alpine Dairy, signed Hans Forster; and the third, the same payee, Jensen and Nielsen, dated December 24, 1949, the amount \$713.40, stamped Alpine Dairy, signed Hans Forster.

Did you do anything in regard to Exhibit 228?

A. Yes, I did.

Q. What did you do in regard to checks on Exhibit 228?

A. I examined the check register of Alpine Dairy to see in what way these checks were listed in the books and I discussed them with Mr. Erickson. [624]

Q. How were the checks listed on the books of Issaquah Creamery?

A. They were listed in the Alpine Dairy books.

Q. In the Alpine Dairy books, pardon me.

A. In account 9, supplies.

Q. What did Mr. Erickson say concerning these checks?

(Testimony of Ira Eppler.)

A. He said that they were personal expenses of Mr. Forster.

Q. I hand you Exhibit 183, which consists of two checks, payable to Ben Bridge, on the date of April 11, 1947, in the amount of \$438.78, and stamped Alpine Dairy, signed Hans Forster; the second, pay to the order of Ben Bridge, December 17, 1946, is the date, the amount, \$199.75, stamped Alpine Dairy, signed Hans Forster.

Did you do anything in regard to Exhibit 183?

A. Yes, I did.

Q. What did you do in regard to Exhibit 183?

A. I discussed these with Mr. Erickson and also examined the books of Alpine Dairy to see how they were listed in the books.

Q. How were these checks listed on the books of Alpine Dairy? [625]

A. They were listed in account 9, supplies.

Q. What did Mr. Erickson say concerning those checks?

A. He said they were personal expenses of Mr. Forster.

Q. I would hand you Exhibit 156, which is a receipt of the Lake Washington Yacht Basin, to the name Hans Forster, and the item Lightning Sailboat, 19 feet long, total price \$1,000, sales tax \$30, total \$1,030, less deposit \$40, net balance \$990, and a deposit slip for Lake Washington Yacht Basin, Seaboard Branch of the Seattle First National Bank, including a group of items totalling for deposit as of the date 6-6-49.

(Testimony of Ira Eppler.)

Did you do anything with regard to Exhibit 156?

A. I don't believe I did, no, sir.

Q. Did you discuss this matter with Mr. Erickson or Mr. Forster?

A. I don't recall that I did, no, sir.

Q. I hand you Exhibit 160, a check payable to Ryan Cadillac Company, the date August 28, 1947, the amount \$3,650, drawn on Alpine Dairy account, and signed H. Erickson and Audrey Favini.

Did you do anything in regard to Exhibit 160?

A. Yes, I did.

Q. What did you do in regard to 160?

A. I examined the books of Alpine Dairy to see in what way it was listed in the books.

I discussed it with Mr. Erickson, and I believe I discussed it with Mr. Forster.

Q. How was Exhibit 160 listed on the books of Issaquah, or——

A. (Interposing) Alpine.

Q. ——of Alpine Dairy?

A. It was listed under Truck Expense.

Q. What did Mr. Erickson say about that exhibit?

A. He said that it represented payment for a Cadillac automobile for Mrs. Forster's personal use.

Q. What did Mr. Forster say about that exhibit?

A. My recollection is that he said he didn't know how it was charged in the books.

Q. I hand you Exhibit 182, which is a bill of the Washington Athletic Club, name Hans Forster, date 2-8-49, and a list of entries, first under Feb-

(Testimony of Ira Eppler.)

ruary 5th, for a wedding reception, the total amount of the bill being \$1,695.92, and a check to the Washington Athletic Club on February 21, 1949, in the amount of \$1,695.92 of Issaquah Creamery Company, signed Hans Forster.

Did you do anything in regard to Exhibit 182?

A. Yes, I did.

Q. What did you do in regard to Exhibit 182?

A. With reference to the check itself, I examined the books of Issaquah Creamery to see in what way it was listed in the books.

I also discussed it with Mr. Forster and with Mr. Erickson.

Q. What did Mr. Erickson say about Exhibit 182?

A. He said it was charged to advertising, but that it was a personal expense for the Forster family.

Q. What did Mr. Forster say about Exhibit 182?

A. My recollection is that he said he didn't know how it was charged in the books. [628]

* * * * *

The next one, payable to Jordan and Company, and charged to plant expense in the amount of \$945 for the purchase of stock for Mr. Forster.

In the year 1946——

Q. (Interposing) What is the total for the year 1945, please?

A. A total of \$ 6,129.52. [636]

* * * * *

(Testimony of Ira Eppler.)

The next one, payable to Merrill, Lynch, Pierce, Fenner and Beane, in the amount of \$3,600 charged to plant expense but for the purpose of buying butter futures for Mr. Forster.

The next one payable to Betty Forster, charged to plant expense in the amount of \$100, but for personal use.

The next one payable to Bachus Luggage Company, charged to plant expense in the amount of \$60 for personal expense.

The next one has been marked out.

Next, cash charged to plant expense in the amount of \$50 to provide cash for personal use.

The total for personal use in 1946, \$8,183.24.

* * * * * [637]

The next one to cash, charged to plant expense in the amount of \$30 for personal use.

The last one in 1947, payable to cash, charged to plant expense in the amount of \$20 for personal use. A total for the year 1947 of \$4,837.53.

* * * * * [539]

IRA EPPLER

A. (Continuing): The last two which I read do not indicate, at least those do not indicate the purpose for which the checks were issued, but Mr. Erickson said they were for personal items.

I am sorry, I don't know which item I ended with.

(Testimony of Ira Eppler.)

(Whereupon, the following was read by the reporter: "Answer: * * * The next one is payable to Peoples National Bank, charged to plant expense in the amount of \$200 for a personal expense of Mr. Forster.")

A. (Continuing): The next one is payable to cash, charged to plant expense, in the amount of \$50 and Mr. Erickson stated that it was for a personal expense, but his list was silent on that point.

The total for 1948 is \$2,819.50.

Beginning with 1949, the first check is payable to J. R. Stephenson, charged to plant expense [641] in the amount of \$250, and represents a loan.

The next one is payable to Jordan and Company, charged to plant expense in the amount of \$250.25 for stock.

The next one is payable to Washington State Bank, charged to plant expense, in the amount of \$200. The list is blank, but Mr. Erickson said it was for a personal item for Mr. Forster.

The next one is payable to Peoples National Bank, charged to advertising in the amount of \$600. The list is blank, but Mr. Erickson said it was for a personal item.

The next one is payable to Sherman Clay and Company, charged to advertising in the amount of \$47.28. Mr. Erickson said it was for a personal expense. The list is blank.

The next one is payable to R. Marrian Beebe, charged to plant expense in the amount of \$488.00 for dental work.

(Testimony of Ira Eppler.)

The next one is payable to cash in the amount of \$60 charged to advertising.

The list is blank, but Mr. Erickson said it was for a personal item of Mr. Forster.

The next one is payable to Peoples National Bank, charged to plant expense in the amount of \$300. [642] The list is blank, but Mr. Erickson said it was a personal item of Mr. Forster.

The total for 1949 is \$3,332.89.

Beginning with January, 1945, for Issaquah Creamery, the first one not previously mentioned is payable to the Legation of Switzerland, charged to plant expense, in the amount of \$24.20, actually for Swiss Military Tax.

Mr. Griffin: Again, may I inquire, that is what Mr. Erickson says on there "For Swiss Military Tax"?

The Witness: His list just says, "Military Tax", I believe.

A. (Continuing): The next one not previously mentioned is payable to Jorgensen's Upholstery, charged to accounts payable, plant expense, in the amount of \$134.93. It is for house expense.

All of the others on this list have previously been mentioned with reference to these other checks.

The total for 1945 is \$2,028.01.

The first check in 1946 is payable to the Swiss Legation, charged to advertising in the amount of \$50 for Military Tax.

All of the others in 1946 have previously [643] been described.

(Testimony of Ira Eppler.)

The total for 1946 is \$1,628.73.

In 1947, a check issued to the Legation of Switzerland, charged to advertising, in the amount of \$50 for Military Tax.

The next one, payable to the Swiss Journal, charged to advertising, in the amount of \$50 for a personal subscription.

The next one is payable to Merrill, Lynch, Pierce, Fenner and Beane, charged to plant expense in the amount of \$1200. His list simply shows for Merrill, Lynch, but he said it was for stock.

The next one, likewise payable to Merrill, Lynch, Pierce, charged to plant expense in the amount of \$350. His list shows Merrill, Lynch. He said it was for stock.

The next one, the payee is the same, charged to Plant Expense in the amount of \$325, again for stock, according to Mr. Erickson. His list doesn't show.

The next one payable to Frank Ostrander, charged to plant expense in the amount of \$12, for lodge dues.

The next one, to the Swiss Journal, charged to office expense, in the amount of \$5 for a subscription. [644]

The total in 1947 is \$8,734.38.

The first item in 1948 is payable to Gordon Crosby, charged to plant expense in the amount of \$432, and addition to a mortgage.

The next one is payable to Legation of Switzer-

(Testimony of Ira Eppler.)

land, charged to Plant Expense, for \$50 for Military Tax.

The next is John Kronick, charged to plant expense, in the amount of \$200, and is real estate purchase.

The next one, likewise to John Kronick, charged to plant expense, in the amount of \$886.16 for real estate purchase.

The next one, also payable to John Kronick, charged to plant expense, in the amount of \$500 for real estate purchase.

Another to John Kronick, charged to plant expense in the amount of \$500, for real estate purchase.

The next one, payable to Hans Forster, charged to plant expense, in the amount of \$550, nothing on the list, but Mr. Erickson said it was a personal item.

Another one payable to John Kronick, charged to plant expense in the amount of \$200 for real estate [645] purchase.

Another to John Kronick, charged to plant expense, in the amount of \$200 for real estate purchase.

Another to John Kronick, charged to plant expense in the amount of \$100, for real estate purchase.

Another to Olson Carpet Company, charged to plant expense, \$379.56, rugs for home.

One to Jordan and Company, charged to plant

(Testimony of Ira Eppler.)

expense in the amount of \$616.50, for stocks or bonds.

Total for 1948 is \$5,412.87.

For 1949, Legation of Switzerland, \$50 charged to advertising expense, for Military Tax.

An item payable to Poggie Club, charged to advertising, in the amount of \$3 for dues.

An item payable to News Week, charged to office expense in the amount of \$10 for a subscription.

A check payable to Jordan and Company, charged to plant expense, in the amount of \$2,087.75, for stocks and bonds.

The total for 1949 is \$5,403.08.

Q. (By Mr. Obenour): What is the total, please, of—for the period between 1945 and 1949 of those expenses charged [646] to Alpine?

A. \$25,302.68.

Q. During the same period, what is the total of the personal items charged to Issaquah Creamery?

A. \$23,207.07.

Q. And what is the total then of the personal expenses charged to the two companies?

A. \$48,509.75. * * * * * [647]

Q. (By Mr. Obenour continuing): For the years—were the figures of the personal expense items to which you have just testified for the year 1945 used further by Mr. Erickson?

A. I believe so, yes, sir.

Q. Where were they used?

A. Well, they appear in the books as among

(Testimony of Ira Eppler.)

other business expenses for the year, a part of the total business deductions.

Q. Were the total business deductions used further by Mr. Erickson on the books of Issaquah Creamery for the year 1945?

A. As near as I know, they were not.

Q. Was the total for business deductions used in the books of Issaquah Creamery for 1945 in computing the profit for the Creamery for that year?

A. Yes, they were.

Q. Was the profit computed for the year 1945 including these business expenses used upon the tax return of Issaquah Creamery for the year 1945?

A. Yes, it was.

Q. For the year 1946, was the business—was the expense which you have testified to here as [649] personal expense for Issaquah Creamery in the year 1946 used further by Mr. Erickson?

A. It comprised a part of the total of the business expenses for that year.

Q. Were the business expenses for Issaquah Creamery in the year 1946 used further by Mr. Erickson?

A. I don't believe they were, no, sir.

Q. Were the business expenses used in computing the net profit of Issaquah Creamery in the year 1946?

A. They were, yes, sir.

Q. Was the net profit for the year 1946 of Issaquah Creamery computed from the use of these figures of the expenses of 1946 included on the tax

(Testimony of Ira Eppler.)

return of the Issaquah Creamery, for the year of 1946? A. Yes, it was.

Q. Was the figure that you testified to as a business expense of Issaquah Creamery for the year 1947 used in computing the total expenses of Issaquah Creamery for the year 1947?

A. Yes, sir.

Q. Was the total business expenses, using the figures that you have described for the year 1947 used in computing the net profit for Issaquah Creamery for the year 1947?

A. Yes, it was. [650]

Q. Was the profit so computed for the year 1947 used on the tax return of Issaquah Creamery for the year 1947? A. Yes, sir.

Q. Was the figure that you have testified to for the year 1948 for Issaquah Creamery used further in computing the total business expenses for Issaquah Creamery for 1948?

A. Yes, it was.

Q. Was the business expense so computed used in determining that profit for the year 1948?

A. Yes.

Q. Was the business expense used in—rather, net profit so computed for the year 1948, for Issaquah Creamery used in the tax return for Issaquah Creamery for the year 1949—1948?

A. Yes, it was.

Q. Was the same practice as you have described in the preceding years used in the computation of the profit used on the tax return for Issaquah Creamery in 1949?

(Testimony of Ira Eppler.)

Mr. Griffin: Object to the form of that question.

The Court: Objection sustained. [651]

Q. (By Mr. Obenour continuing): Was the figure that you have described for the year 1949 as the business-personal expense, for 1949, used further by Mr. Erickson? A. Yes.

Q. How were they used by Mr. Erickson?

A. To arrive at the total business deductions for the year.

Q. Was the year—was the business deduction for the year 1949 for Issaquah Creamery used further in computation of the profit of Issaquah Creamery for that year? A. Yes, it was.

Q. How was it used?

A. It was used in the profit and loss statement and the tax return for that year.

Q. Was the profit so computed from the use of the figures that you have testified to for 1949 charged to Issaquah Creamery used then in the tax return for Issaquah Creamery in the year 1949?

A. Yes, it was.

Q. Was the figure that you have testified to for the year 1945 charged to Alpine Dairy used further upon the books of Alpine Dairy?

A. They were used to arrive at the total business deductions for the year. [652]

Q. Was the total business deductions so computed for the year 1945 of Alpine Dairy used further?

A. Yes. That was used in the income tax return for that year.

Q. For the year 1946, the amount you have testi-

(Testimony of Ira Eppler.)

fied to as charged on the books of the Alpine Dairy, were those figures used further?

A. Yes, they were used in computing the net profit for the tax return.

Q. For the year 1946? A. Yes.

Q. Was the figure that you have testified to as to 1947 for business expenses—personal expenses, used further?

A. Yes, it was.

Q. And in what manner was it used?

A. To compute the net profit for Alpine Dairy in the income tax returns.

Q. For the year 1948 were the figures to which you have testified used further? A. Yes.

Q. In what manner were they used?

A. To compute the net profit for Alpine Dairy in the income tax return.

Q. And for the year 1949, was that figure used further? [653] A. Yes, it was.

Q. How was it used?

A. To compute the net profit for the Alpine Dairy in Mr. Forster's tax return.

Q. What was the manner of ownership of Alpine Dairy during the years 1945 to 1949?

A. An individual ownership.

Q. Of whom? A. Mr. Forster.

Q. Would the use of these figures that you have referred to in the years 1945 to 1949 affect in any way the tax return of Mr. Hans Forster during that same period?

A. Yes, they would.

(Testimony of Ira Eppler.)

Q. How would they affect the tax returns of Mr. Hans Forster during the respective years?

A. The final result would be to lessen the amount of tax shown due.

Q. What would the effect of the use of these figures during the years 1946 through 1949 upon the tax return of Issaquah Creamery be?

A. It would likewise lessen the amount of tax shown due for the corporation for those years.

Q. Did you have any further conversation with Mr. Erickson concerning these personal expenses?

A. Yes, I did.

Q. What further did Mr. Erickson say concerning these personal expenses?

A. He said that he knew that they were not corporation expenses in any way.

Mr. Keesling: If the Court please, can he fix the date of this conversation?

The Court: Can you fix the date?

The Witness: Yes. I believe it was on October 24, 1950, and then again on March 7th and 8th, 1951.

The Court: And the place?

The Witness: Here in Seattle at my office in this building.

The Court: And the persons present?

The Witness: Mr. Erickson, Mr. Marx, Mrs. Stokie, shorthand reporter, and myself.

Q. (By Mr. Obenour): Did you ask Mr. Erickson how these bills would be paid?

A. Yes, I did.

Q. What did Mr. Erickson say in that regard?

(Testimony of Ira Eppler.)

A. He said that oftentimes the billings on these just came in the mail to the Creamery office and accumulated in the basket of items to be paid; that others, other bills, were brought in and given to him [655] by Mr. Forster with instructions to pay them.

Q. Did he say particularly any bills that would be brought in by Mr. Forster?

A. Yes, he specifically mentioned the bills for Military Tax from the Swiss Legation.

Q. What did he say concerning the bills for the Swiss Military Tax?

A. That Mr. Forster usually brought those in and handed those to him personally.

Q. Did Mr. Erickson say what he would do with the checks and the bills after he had made out the checks?

A. Well, he indicated that he mailed them to the payee.

Q. Did Mr. Erickson say anything about notifying Mr. Forster when the checks had been made out?

A. I believe he did. My recollection is that he either told him that the bills had been paid, or left the checks, and the billings on his desk for his inspection. * * * * * [656]

Q. Did you discuss Exhibit 151, the receipt of Hopper-Kelly for a Television Set with Mr. Forster?

A. Yes, I did.

Q. What did Mr. Forster say concerning Exhibit 151?

A. I believe he said that he had told Mr. Erick-

(Testimony of Ira Eppler.)

son that it should be charged to plant—to business expense.

Q. And did Mr. Forster say anything further concerning the exhibits to which you have described?

A. Yes, he **did**.

Q. What did he say?

A. Well, my recollection of his comment was that in talking to Mr. Erickson about it, he had said [660] in a joking way that since most of the employees of the Creamery had gone to his house, and watched Television, that it should be charged as a plant expense.

Q. Did Mr. Forster say anything further concerning the entry you have read to the Swiss Legation?

A. Yes, he did.

Q. What did he say concerning that?

A. Well, he said with reference to all of these items included in this list, including the Swiss Legation, that it was his understanding that he had a personal drawing account with the corporation and with Alpine Dairy, and that these items were charged to his personal accounts, rather than to business expenses.

Q. Did Mr. Forster have such an account?

A. This chart shows that he had at Alpine Dairy. * * * * * [661]

Mr. Obenour: It is my recollection there is additional information concerning the currency deposited in 198 which was not brought out yesterday which we would attempt to bring out today.

The Court: What is your question, then?

(Testimony of Ira Eppler.)

Q. (By Mr. Obenour continuing): What was the amount of unidentified currency in the year 1945?

Mr. Griffin: The witness hasn't so far testified there is unidentified currency. He said he made an effort. He didn't even indicate by his answer he could answer the question; I see no materiality of it. It is conceded it went into 198 [665] and didn't go through the books. It wouldn't make any difference whether it was currency, coin, or anything.

* * * * * [666]

Q. (By Mr. Obenour): In your interview at this office, in the presence of Mrs. Stokie, Mr. Marx, Mr. Erickson and yourself, on March 7, 1951, what did Mr. Erickson say concerning inventory in the tax return for 1948, Exhibit 13?

A. He said that he had helped to make the inventory at Issaquah, had arrived at the total for the amount, and had written it down by 25 thousand dollars.

Q. Did he say anything further concerning [669] writing this inventory item down \$25,000?

A. Yes, he did.

Q. What did he say?

A. He said that he had been instructed to reduce that. * * * * * [670]

Q. Did you discuss the entry — what did Mr. Erickson say on that occasion, concerning the entries on Exhibit 14, the tax return for Issaquah Creamery for the year 1949?

(Testimony of Ira Eppler.)

Mr. Griffin: Object to the form of the question.

The Court: Objection overruled.

Mr. Le Sourd: Too general.

Mr. Keesling: He is making an assumption.

The Court: He is making an assumption about what?

Mr. Keesling: Well, rather than take the time, I will withdraw objection.

The Court: Do you have the question in mind?

The Witness: I would like it read back.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. He said that he had altered part of the [671] figures and had written in some fictitious figures as well. * * * * *

Q. Plaintiff's Exhibit 213; what entries contained in Exhibit 213 did you discuss with Mr. Erickson?

A. There are three principal entries; one of them involves the milk draft entries for November and December.

Q. What did Mr. Erickson state——

A. (Interposing): Excuse me, I hadn't finished my answer. [672]

Each of two entries for milk drafts had been increased by five thousand dollars each to make a total of ten thousand.

Q. And what was the date on which those entries were——

A. (Interposing): May I complete my answer?

(Testimony of Ira Eppler.)

Q. Yes.

A. The second item that I mentioned was an account payable to Consolidated Dairy of slightly more than fifty-one thousand dollars, and a third item which he mentioned was a check issued to R. L. Stephenson Company, which he later put back in the corporation's bank account the following year.

I think on the R. L. Stephenson check, he said it was shown as an account payable at the end of 1949, and since it was not actually owing R. L. Stephenson, that in order to get it off his books, he later issued a check, which check was not given to Mr. Stephenson, however.

I believe that covers all the things that you had asked. [673]

* * * * *

(Whereupon, the following was read by the reporter: "What did Mr. Taylor say?")

A. He further said that once he had been advised of these particular items, that is, the fifty-one thousand, and the ten thousand, that he made certain corrections in his year-end work sheet for use in preparing the tax return; then went ahead and prepared the tax return, using these amended figures which Mr. Erickson had given him.

* * * * * [689]

Q. What is the total of the figures that are in that column as having been obtained from Mr. Erickson?

(Testimony of Ira Eppler.)

A. Well, there is no total shown, and I believe there are other figures which Mr. Taylor said were not supplied by Mr. Erickson. The total of the two which he said Mr. Erickson had supplied him, or, rather, I should say, the three would be \$71,570.76.

Q. Were there any other—

A. (Interposing): The total which I am using, by the way, is \$10,000 inventory, \$51,570.76, in accounts payable, and ten thousand in milk drafts.

Q. Were there any other erasures upon Exhibit 259 which you discussed with Mr. Taylor?

A. Well, I believe that I did discuss other items with him, but I don't recall now what they were.

Q. Thank you. Did you discuss these items with Mr. Forster, referring to the two five-thousand-dollar milk draft items, the \$18,000 Stephenson item, and the \$50,000 account payable item?

A. Yes, I did.

Q. What did Mr. Forster say concerning these entries? [696]

A. He said that when Mr. Taylor gave him the net profit figure at the end of January, 1950, for the year 1949, that he told Mr. Taylor that the net profit must be wrong, that they couldn't have made that much money, and particularly since the previous month they had shown quite a high profit that there must be some mistake in his figures somewhere, and for him to go back through them and to find out where the errors were.

He also said that he did not give any instructions to make any alterations or additions to the books.

(Testimony of Ira Eppler.)

Q. In your examination of the books of Issaquah Creamery, did you find any entries pertaining to Puget Sound Products?

A. Yes, I did.

Q. Handing you Exhibit 64, which is a check payable to Puget Sound Products in the amount of \$5,744.44, dated 12/28/49, and drawn on the Issaquah Creamery Company, Incorporated, and signed Hans Forster, and endorsed Puget Sound Products Company, Hans Forster, did you do anything in regard to that Exhibit 64?

A. Yes, I did.

Q. What did you do? [697]

A. I examined the books of Issaquah Creamery, to see how it was listed in the books, and I also examined the records of Washington State Bank to see where it was deposited.

Q. Where was it deposited?

A. In Mr. Forster's savings account.

Q. How was the check listed in the books of Issaquah Creamery?

A. It is listed under account No. 3. I believe that is butter purchases. If I could refer to the chart of accounts——

(Whereupon, exhibit was handed to the witness by Mr. Obenour.)

A. (Continuing): Yes, account No. 3 is butter expense.

I also believe that I talked to Mr. Forster about this particular item.

(Testimony of Ira Eppler.)

Q. What did Mr. Forster say concerning this item?

A. He said that the check had no relation to the purchase of butter.

Q. Were there any other entries on the books of Issaquah pertaining to this check, this entry of Puget Sound Products?

A. Well, it is included in the total of purchases [698] in the profit and loss statement in the tax return.

Q. By including that entry on butter purchased for the year in which it was drawn, 1949, what is it then used—what is its use then as to the tax return for the corporation for that year?

A. It is listed in the total of merchandise purchased. I should say “under cost of goods sold”, the description on the tax return.

Q. In your analysis of the bank accounts of Mr. Forster, did you add the totals of currency deposited to the bank accounts of Mr. Forster?

A. Yes, I did.

Q. Did you discuss these totals, this total, with Mr. Forster? A. Yes, I did.

Q. Did you discuss these totals, this total, with Mr. Forster? A. Yes, I did. * * * * * [699]

Q. What was the conversation with Mr. Forster on March 8th or 9th, 1951, in this building, in the presence of Mr. Kachlein, Mr. Brody, Mr.—

The Court (Interposing): You needn't repeat. I think the conversation has been referred to.

A. Well, he said that the only items that he

(Testimony of Ira Eppler.)

could think of other than the ice cream sales which were not recorded in the books were the Time Oil Company rebates, and some farm rental, which he had received in the form of currency.

Q. (By Mr. Obenour): What was the total of the amounts of currency that were identified?

A. For the entire period, or——

Q. (Interposing): For the year 1945?

A. I believe in 1945, we identified approximately [706] three thousand dollars coming from the farm rental and from the Time Oil Company rebates.

Q. What was the total of the currency in 1945 that you were discussing with Mr. Forster?

A. \$21,305.00.

Q. What was the amount of unidentified currency?

A. Well, it would be three thousand less than that or \$18,305.

Actually, I believe the amount we identified was slightly less than three thousand, but it was close to three thousand dollars.

Q. Did you ask Mr. Forster as to the—for identification or possible identification of this remaining balance of some \$18,300?

A. Yes, I did.

Q. What did Mr. Forster say?

A. He said that the only identification that he could offer was that it came from the ice cream sales. * * * * * [707]

Q. What did Mr. Erickson say concerning the

(Testimony of Ira Eppler.)

books and records of the Daisy Ice Cream Company?

A. He said they were no longer in existence.

Q. Did he say anything further concerning the books and records of Daisy Ice Cream Company?

The Court: I am going at this time to caution the witness against statements that may relate to—that may repeat statements of others so if that is what you are asking for here, I ask you to avoid those at this time, particularly. You may proceed. Do you understand my caution?

The Witness: Yes, I do, sir.

I wonder if the Court could have it read back?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. I believe he said that they had been destroyed in a flood, which had occurred at Issaquah.

Q. (By Mr. Obenour): What records did you request of Mr. Erickson pertaining to Daisy Ice Cream Company?

A. I asked for any record which he might have, any records of them.

Q. Did you ever receive any records pertaining to the Daisy Ice Cream Company?

A. Yes, I did.

Q. What records did you receive?

A. In addition to the reference to the charge sales, which is included in this large book here, I received a partial——

(Testimony of Ira Eppler.)

Q. (Interposing): By "large book", you are referring to Exhibit 244?

A. Yes. I received a partial listing of the cash sales of Daisy Ice Cream Company. It was not complete, however. Some months were missing; some years were missing.

Q. Where did you receive those?

A. From the Issaquah Creamery Company.

* * * * * [720]

Q. (By Mr. Obenour): The amount that you have just testified to, Mr. Eppler, as having been traced into the deposit of 198, did you compare exhibit 10 and—which is the tax return of Issaquah Creamery for 1945—and Exhibits 1 and 6, the tax returns of Hans Forster and Evelyn Forster for [732] the year 1945?

A. Yes, I did.

Q. Is the amount of \$17,200.50 shown upon the—any of the three tax returns mentioned?

Mr. Griffin: If the Court please, I suppose that several times during the day the same matter may be gone into. The witness has testified to items that went into account 198. It has been stipulated from the opening statement with a written stipulation that the items in 198 are unreported income.

Now, I just object to the repetition, several times, of something that is admitted, and I was called upon to make the stipulation saying it would save two months of this trial time.

Mr. Obenour: If the Court please, if counsel would care to increase the stipulation to which he

(Testimony of Ira Eppler.)

referred as being all items in 198 unreported on the books of Issaquah Creamery, Alpine Dairy, and upon the tax returns of Issaquah Creamery and Mr. Forster for each of the years in question, the Government would accept that stipulation.

Mr. Griffin: May I see 238, please? The Government wrote the stipulation.

The Court: Is that the long stipulation?

Mr. Griffin: Yes, your Honor. "It is [733] stipulated between counsel for all parties in the above action that the attached schedule correctly reflects the existence, description, purpose, amount, and date of specific checks made payable to Issaquah Creamery which were not recorded on corporate books of Issaquah Creamery and which were deposited to Hans Forster's personal savings account No. 198 in the Washington State Bank at Issaquah, Washington."

Mr. Obenour: There are two things in that regard. There was reference to the cash I am referring to in this instance, and there is no reference in the stipulation as to including on the tax returns of either Issaquah or Mr. Forster himself.

Mr. Griffin: Well, I signed the stipulation. I thought I was signing everything the Government wanted.

Mr. Obenour: We would so stipulate at this time, if the Court please.

Mr. Griffin: I signed that under a misapprehension. I thought I was saving time.

(Testimony of Ira Eppler.)

The Court: Have you any desire at this time, Mr. Griffin, to stipulate further?

Mr. Griffin: No, your Honor; no further stipulation. * * * * * [734]

Mr. Griffin: Excuse me, again. The Court may remember I stipulated that anything in 198 did not show upon the returns.

Mr. Obenour: We accept it as indicated now, that any of the items listed thereon as not being reported, and being deposited to 198 were not shown on the tax returns of Issaquah Creamery or Mr. Forster. We would accept it at this time, if there is any question about that.

The Court: Let's get this a little more clearly in mind.

Mr. Le Sourd: I am slightly confused at this point. I don't know a great deal about Mr. Forster's savings account 198. There may be many, many items in that account that have no place in the corporate books at any time, so I take it, if the stipulation is that all items in 198 were not reflected in the tax returns of Issaquah and Alpine, it seems to me that is pretty broad for a party like ourselves with no knowledge of the facts at all to stipulate to.

Mr. Griffin: I am not stipulating, so that [735] you don't misunderstand, sir, I am not stipulating that the items in 198 should have been upon any corporate return. There are Alpine items in there. But, I am stipulating that they are not upon the return or upon the books of Issaquah. * * * * *

(Testimony of Ira Eppler.)

Q. (By Mr. Obenour): I hand you Exhibit 230, a series of four checks, drawn on the account of Amalgamated Sugar Company and the first payable to Issaquah Creamery in the amount of \$122.50 on October 7, 1947, the second payable to Hans Forster Company, Issaquah, Washington, on November 28, 1949, in the amount of \$264.00, the third payable to Hans Forster Company, Issaquah, Washington, dated August 3, 1949, in the amount of \$336.60 and the fourth payable to the Hans Forster Transportation Company in the amount of \$132.84 under date of August 5, 1948.

Were any of the checks included on the tax returns of Mr. Hans Forster or the Issaquah Creamery for the respective years of 1947, 1948 and 1949?

A. No, they were not.

Q. I hand you Exhibit 188, which is a check to [740] the Issaquah Creamery Company, upon the account of Darigold, under date of December 31, 1946, in the amount of \$864.00, and ask you if it was included on the tax return of either Mr. Forster or Issaquah Creamery for the year 1946?

A. I don't believe that it was.

Q. I hand you Exhibit——

A. (Interposing) I would need to further determine that, however.

Q. (Continuing) I hand you Exhibit 189, which is a series of checks drawn on the account of Darigold, payable to Issaquah Creamery Company, the first \$288.00, dated January 2, 1947, the second \$115.20, dated January 30, 1947, and the third

(Testimony of Ira Eppler.)

\$3,216.00, dated January 30, 1947, and ask you if any of these checks were included upon the tax return of either Mr. Hans Forster or Issaquah Creamery for the year 1947?

A. No, they were not. I would like to amend my answer with reference to exhibit 188. I believe that it was reported by the corporation.

The Court: When you say "the corporation," you mean Issaquah?

The Witness: Issaquah Creamery Corporation is shown as the payee and that is the corporation I referred to. [741]

Q. (By Mr. Obenour): I hand you Exhibit 209, which is a check to Issaquah Creamery Company, in the amount of \$412.50, drawn on Renton Ice and Ice Cream Company and ask: Was that included on the respective tax return of Issaquah Creamery or Mr. Forster?

A. No, it was not.

Q. I would hand you Exhibits 142, which is a series of checks drawn in the account of Apex Dairy, between the years 1946 and 1949, payable to Issaquah Creamery, and ask if any of these checks were included upon the tax return of either Hans Forster or Issaquah Creamery for the respective years of 1946 through 1949?

A. No, sir; they were not.

Q. I hand you Exhibit 190, which is a check drawn to Issaquah Creamery upon the account of Darigold in the amount of \$4,939.74, under date of October 4, 1947, and the accompanying document,

(Testimony of Ira Eppler.)

and ask if this check was deposited to either the account of Mr. Forster or the Issaquah Creamery for the year 1947?

A. No, sir; it was not.

Q. I hand you Exhibit 150, which is a series of checks drawn on the account of Finstad and Utgard payable to Issaquah Creamery, the years 1944 through—— [742]

Mr. Griffin: (Interposing) Did Counsel say Exhibit 52?

Mr. Obenour: 150.

Q. (By Mr. Obenour continuing): ——which are payable to Issaquah Creamery upon the account of Finstad and Utgard between the years 1944 and 1949.

As to those checks within the years 1945 to 1949, I will ask you, are they shown on the tax return of either Mr. Forster or Issaquah Creamery during their respective years of 1945 through 1949?

A. No, they are not.

Q. Did you find any checks upon the account of Arctic Gardens that were payable to Issaquah Creamery? A. Yes, I did.

Q. What were the amounts of those checks?

Mr. Le Sourd: If your Honor please, may I inquire whether we are talking about the same checks we have already been over once before?

Mr. Obenour: I believe they have been separately removed. I am sorry, I don't have——

The Court: (Interposing) You believe they have?

(Testimony of Ira Eppler.)

Mr. Obenour: I believe they have.

254? [743]

The Witness: Should I answer the question?

The Court: Do you think you have an exhibit covering this?

Mr. Obenour: Yes, sir; I was simply attempting to——

Mr. Griffin: (Interposing) He testified in detail to them yesterday, 253 and 254.

Mr. Obenour: 253 and 254.

Q. (By Mr. Obenour continuing): As to the checks of Issaquah Creamery and Arctic Gardens in Exhibit 254, was that shown upon the tax returns of either Mr. Forster or Issaquah Creamery?

A. No, they were not. [744]

* * * * *

Q. (By Mr. Obenour): Mr. Eppler, I hand you Plaintiff's Exhibit 155, which consists of 51 rent receipts and 12 cancelled checks drawn by Bert Alpress, and payable to Hans Forster during the periods 1/11/45 and 12/13/49, and ask if you did anything regarding Exhibit 155?

A. Yes, I did.

Q. What did you do, please?

A. I discussed these with Mr. Alpress. I added up the total of them, the checks in question, and I examined the deposit tickets of Account 198 and found that they were listed on the deposit tickets of Mr. Forster's personal account.

I discussed them—I don't recall whether or not

(Testimony of Ira Eppler.)

I mentioned the total, but I discussed this with Mr. Forster [756] and with Mr. Taylor.

Q. What is the total of the rent receipts contained in 155?

A. I believe it is \$5,775.00.

Q. Were any of the amounts represented by the checks, or the receipts, in Exhibit 155, entered on the tax returns for the respective years between 1945 and 1949 of either Issaquah Creamery or Mr. Hans Forster?

A. No, sir; they were not.

Q. Did you discuss with Mr. Forster the Daisy Cash Sales for the period between 1945 and 1949?

A. I believe I did, yes, sir.

Q. What did he say, and what did you say on that occasion?

First, where did this conversation take place?

A. Here in this building.

Q. What date, please?

A. Either on March 8th or March 9, I believe, 1940—excuse me, 1951.

Q. Who was present?

A. Mr. Forster, Mr. Kachlein, Mr. Brody, Mr. Gorans, Mr. Marx, myself, and perhaps Mrs. Stokie, the recorder. [757]

Q. What did Mr. Forster say and what did you say on that occasion?

A. Well, I said that I was seeking some explanation as to how the entire cash sales of a whole company apparently had not been taken onto any books or any of his tax returns.

(Testimony of Ira Eppler.)

I don't recall that I mentioned the totals involved. I may have. There were several hundred thousand dollars of the cash sales which we discussed generally, and my recollection is that he said that it was his understanding that this was a part of Alpine Dairy, and was reported in some way by Alpine Dairy. He said that he had asked a number of times for a profit and loss statement from his accountant, but didn't receive any, so his bookkeeper later did prepare some kind of a profit and loss statement for the company.

Q. What was the total of Daisy cash sales, Daisy Ice Cream cash sales, during the period of 1945 to 1949, if you know?

A. I don't have a total for those years separately. The total that I have includes the last six months of 1944 as well. For a portion of the period of 1945 through 1949, however, there was a total of \$618,697 deposited in the form of cash sales to the Alpine Ice Cream account at Peoples Bank.

Q. Was there any of this amount of cash sales entered upon the books of either Issaquah Creamery or Alpine Dairy?

A. Not upon these cash sales sheets which are in evidence.

Q. Were the figures from the cash sales sheets used in any—or for any other purpose?

A. I don't know. They weren't used in arriving at the total figures on the income tax returns.

Q. Did you ever discuss with Mr. Taylor the matter of interest? A. Yes, I did.

(Testimony of Ira Eppler.)

Q. Where did that—where did you talk to Mr. Taylor concerning interest?

A. I believe here, in this building.

Q. When was that?

A. I believe it was on May 16, 1951.

Q. Who was present?

A. Mr. Taylor, Mr. LeSourd, Mr. Marx, Mrs. Stokie, the stenographic worker, and myself.

Q. What was the conversation that you had with Mr. Taylor concerning interest on that occasion?

A. As I recall, I said that Mr. Marx and I had added up the interest that we had learned about up to that time of Mr. Forster, which was not included [759] in Alpine Dairy, and we had a total of something like 35 or 36 thousand dollars, and that we had also added up the total interest listed on Mr. Forster's income tax returns and found that it was slightly more than ten thousand, and we were seeking some explanation for the difference, that is the twenty-five thousand which was not reflected in the tax returns.

He said that the items which he had listed as interest on the tax returns were the figures which Mr. Forster had given him; that when he prepared the returns, he asked Mr. Forster about his interest and other income items not included in the company's, that is, Alpine Dairy, in order to obtain the necessary details for the tax returns.

Q. And who is "he" that you are speaking of now, as saying these things? A. Mr. Taylor.

Q. Handing you Exhibit 238, which is a stipu-

(Testimony of Ira Eppler.)

lation entitled "Specific checks made payable to Issaquah Creamery not recorded on corporate books and deposited to Hans Forster's personal savings account," have you examined exhibit 238 during the recess? A. Yes, sir; I have.

Q. There are items thereon in addition to those to which you have already testified? [760]

A. Yes, there are.

Q. Are there any other items contained on 238 which is included on the tax returns for the respective years of 1945 through 1949 of either Issaquah Creamery or Mr. Hans Forster?

The Witness: May I ask that the question be read back to me?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. No, there are not. * * * * * [761]

Cross Examination

Q. (By Mr. Griffin): And during the course of your investigation did you learn that prior to Mr.—shortly prior to Mr. Taylor's going to McNeil Island, he had advised Mr. Kachlein, or suggested and advised Mr. Kachlein, that he employ this firm of accountants for Mr. Forster?

A. Mr. Taylor told me that, yes, sir.

Q. And you recognized this accounting firm as a national—as a firm of national practice over the country, and competent?

A. It has been told to me that they are a national firm, yes, sir.

(Testimony of Ira Eppler.)

Q. And at this first meeting, an accord was reached, was it not, that Mr. Forster personally and through his attorneys and the accounting firm would give you, and by you, I mean the Bureau, the Government, the fullest of cooperation possible, in endeavoring to ascertain the facts of the Hans Forster tax situation?

A. They said that they wished to do that, yes, sir.

Q. Yes, sir; they said it, did they not, that as of that,—as of October—pardon me, August, of 1950, it was apparent a large amount of tax was due but they hadn't gone far enough even to estimate what [764] it might be?

That was about the situation when you came into the picture with them, was it not?

A. No, sir; they did not say that to me. They specified an amount at that time that they had already determined.

Q. As of that time, they had determined there was a certain amount due? What was that amount, approximately?

A. I would like to refer to some notes I made at the time, and I can give you the exact figure that they mentioned to me.

In round figures, they mentioned to me \$1,375,000.

Q. And then, upon—of course, that figure, as the investigation continued, didn't turn out to be right?

A. I don't believe it did, no, sir. [765]

* * * * *

(Testimony of Ira Eppler.)

Q. Now, at this first conversation, or first meeting, you testified, I believe, that Mr. Forster—that you inquired about sales not going on the books, and that Mr. Forster advised you, that is, as of that [769] time, he had learned that the Time Oil discount, the Casein Sales, and the Butter Subsidy items had not gone on the books; is that correct?

A. No, sir; it isn't.

Q. Will you correct me, please?

A. He didn't say anything about butter subsidy. He didn't say when he had learned that these were not reported, not listed in his books. He didn't say anything about the books; nor in fact, did I. I inquired about his tax returns.

Q. Oh, on his tax returns?

A. And these items were offered to me as explanation for the unreported amounts which the accountants mentioned as having been determined.

Q. All right; Mr. Forster at that conversation didn't say anything about the books?

A. I don't recall that he did, other than in a general way.

Q. But he did advise you at that time—and was this a statement of Mr. Forster personally, or the accountants—that the Time Oil discounts and the Casein Sales did not show on his income tax returns?

A. Mr. Forster himself advised me that.

Q. And I thought there was a third item that you—— [770]

A. There was.

Q. What was that?

(Testimony of Ira Eppler.)

A. That is correct. Mr. Forster said that he had bought butter on a rising market, and later sold it at a high profit.

Q. That is the butter futures?

A. He didn't refer to them as "butter futures."

Q. It has been referred to here as——

Mr. Griffin: Strike that.

Q. (By Mr. Griffin continuing): Anyway, there were three items that you were advised on August 29th by Mr. Forster that he then knew on August 29, 1950, at least that had not—that did not show upon his tax returns?

A. That is correct. He mentioned three items.

Q. And by his tax returns, I am including Issaquah Creamery as well,—didn't show there.

Did you ask him when he learned, first learned, that these items did not show upon his tax returns?

A. Yes, I did ask him that.

Q. What did he say?

A. My recollection of what he said is that he didn't know just when he learned that they were not reported on his tax returns. [771]

Q. Now, you made request, in this matter of cooperation, did you not——

Mr. Griffin: Strike that, please.

Can I see 171 and 173?

Q. (By Mr. Griffin continuing): And you testified that you investigated the matter and I believe obtained these receipts, Exhibits 171, 172 and 173, which are the Time Oil Receipts for cash?

A. Yes, sir.

(Testimony of Ira Eppler.)

Q. And this has been referred to as—this Time Oil situation—throughout this case, as a cash discount, and the money not shown on the books and going into Account 198; that is the situation and fact, isn't it?

A. I haven't stated that. I don't know where the money went.

Q. You don't know where the cash went?

A. I have no way of knowing that, no, sir.

Q. You didn't endeavor to trace that money into any portion of this money you referred to as unknown currency, or whatever the term was, that you used in 198?

A. I endeavored to, yes, sir.

Q. You did not succeed? [772]

A. I believe I succeeded in part, yes, sir.

Q. Did you inquire from Mr. Forster as to why this discount was paid in cash?

A. I don't specifically recall that I asked him about it, no, sir.

I read a portion of Mr. Sam Green's testimony to him bearing on that, and asked him to comment on it.

Q. I think you testified that you had an interview with Mr. Forster on March 8th, 1951, in your office in this building? A. That is right.

Q. And that there was present, Mr. Forster, Mr. Kachlein, Mr. Brody, Mr. Marx, yourself, and a shorthand reporter, Eleanor Stokie?

A. That is right.

(Testimony of Ira Eppler.)

Q. You say that you asked Mr. Forster to comment upon the Time Oil Sales?

A. I read a portion of Mr. Green's recorded statement to him, and asked him to comment on it.

Q. Did you also ask him as to why Green paid in cash, rather than by check?

A. I don't recall that I asked him why. I did discuss it with him.

Q. Do you recall what Mr. Forster said? [773]

A. I believe I recall more or less, yes, sir.

Q. Will you tell the Jury, please?

A. The testimony of Mr. Green's, which I read to him, indicated that Mr. Forster had insisted that the rebates be paid to him in the form of currency.

Q. Mr. Green—let me stop you—you heard Mr. Green's testimony under oath, sitting where you are in this case, didn't you? A. Yes, sir.

Q. He didn't make any such claim then, did he?

A. I don't recall specifically whether he did or not. He may have.

Q. All right. Proceed.

A. Mr. Forster said that Mr. Green's statements with reference to this were inaccurate, that he had not indicated one way or another in what form he wanted these rebate payments made to him. He said a number of other things about it, as well.

* * * * *

Q. Well, as the accountants proceeded with their inspection of the books of these various Forster enterprises, more bookkeeping matters came to light all the time, didn't they?

(Testimony of Ira Eppler.)

A. That is correct, yes.

Q. And while the Exhibits 71 and 250 deal with deposits into 198, deposits, of course, include cash as well as checks; that is correct, isn't it?

A. And coins, as well, yes, sir.

Q. I assume coins are cash. The exhibit 238, covers only checks? A. That is correct.

Q. Now, are there any checks shown in Exhibit 238 [793] that were not—checks now that were not disclosed on 71 or 250? A. Yes, there are.

Q. What are those checks?

A. Well, I would have to refer to that to point out some of them.

In fact, I think I would have to go through it quite carefully and compare it with the other two, to show all of them, but I can show a number without reference to the exhibits.

Q. All right.

A. All of the ones listed under 1943, 1945, and most of those listed under 1945 are not reflected in the other two exhibits, and there are several in these other years, as well, which are not.

Q. Can you give me the name of any others in the later years?

A. I would have to study all three exhibits in order to do so by account.

Q. Well, we will reach it a little later.

You are aware of the fact that at least as of February 19th, the date that 238 came in evidence, it was stipulated by all counsel that this schedule 238 correctly reflected the existence, the description,

(Testimony of Ira Eppler.)

the purpose, the amount, and the date of the [794] checks made payable to Issaquah Creamery which were not recorded on the books of the Issaquah Creamery, and deposited to Mr. Forster's personal savings account 198 in the Washington State Bank of Issaquah?

A. I was aware that such stipulation had been made, yes, sir.

Q. And you had been told as early as 1950 by the accountants and Mr. Kachlein, and it was a conceded fact that the monies, checks, cash, coins or currency, deposited in 198 did not—were not reflected in the income tax returns of either Mr. Forster or Issaquah Creamery; that is a fact, isn't it?

A. No, sir; I have never been told that by anyone.

Q. Did you ever inquire whether they were?

A. Extensively, yes, sir.

Q. From whom?

A. Well, I could mention some 20 or 30 people, I believe.

Do you wish me to enumerate the ones that come to my mind?

Q. Did you inquire of Mr. Forster?

A. Yes, I did.

Q. What did he say?

A. He pointed out certain ones which had [795] been given to him, and being handed to him, his being told there was no place to record them in the books and records of his company. There were other items, I believe, of deposit in this account 198

(Testimony of Ira Eppler.)

that he referred to as being the result of certain ice cream sales, the sales tickets and the cash receipts of which were handed to him personally.

Q. Did Mr. Forster state to you at any time or at any place, that any item deposited in 198 was reflected in his income tax returns?

A. I don't recall that he specifically stated so, no, sir.

Q. What he did state was——

A. (Interposing) Sir?

Q. (Continuing) ——that he relied upon Mr. Taylor, and he assumed that they were there?

Mr. Le Sourd: I will object.

Q. (By Mr. Griffin continuing): Didn't he?

Mr. Le Sourd: Object to that on the same grounds, your Honor; hearsay and strictly self-serving in character.

The Court: Objection overruled.

A. Among other things, he said that, yes, sir.

Q. (By Mr. Griffin): By the way, referring back to your investigation in regard to the Time Oil rebates, Exhibits 170, 171 and 172, during the course of this investigation you were advised that Mr. Forster had acquired the Gold Medal Creamery, weren't you?

A. I heard that he had, I believe, yes, sir.

Q. And Mr. Brody advised you and Mr. Marx that upon that acquisition, they discovered that Gold Medal was receiving cash discounts for oil from this same man, Green, didn't they, paid in cash?

(Testimony of Ira Eppler.)

A. I don't recall whether or not he did. I already knew it prior to that time, however.

Q. You don't recall any conversation with Mr. Brody in that connection?

A. I don't recall any conversation, no, sir. I may have had such a conversation. I knew that that company was receiving cash rebates.

Q. That was a corporation?

A. I don't know what form of business enterprise it was.

Q. And it was receiving rebates from the same Mr. Green? A. That is correct.

Q. And then, before Mr. Forster purchased it, purchased the stock in it? [797]

A. That is my understanding, yes, sir.

Q. Now, 238 discloses the deposit to Account 194—or 198—of Borden and Company's Casein Company of America, referred to here as "Casein Sales," proceeds of sales of that account, doesn't it?

A. I don't know whether it does. It probably does, yes, sir.

Mr. Griffin: May I read from the exhibit, if the Court please?

The Court: You may.

Mr. Griffin: Reading from Item 20, maker, Borden Company, Casein Company of America, Division New York, 4 dated checks, check numbers on two of them, purpose of the check or nature of payment, sale of Casein. The amounts in the years 1943, 1944,—1943, approximately \$5,500; 1944, \$18,900.

(Testimony of Ira Eppler.)

Q. (By Mr. Griffin): You requested information and data in regard to the fact of such sales, did you not? A. Yes, I did.

Q. And it was supplied to you?

Mr. Griffin: May I have Exhibit 242, please?

Strike the "it was supplied to you." [798]

Q. (By Mr. Griffin): Pursuant to that request, upon your part, Mr. Forster proceeded to obtain from the Borden Company a statement covering the sales of casein, did he not?

A. I was so told.

Q. And there was supplied you by Mr. Forster Exhibit 242?

A. I believe Mr. Kachlein gave this to me.

Q. And this information so supplied you that you wanted is the identical information contained in 238 under "Casein Sales," is it not?

Will you compare them, and see?

A. No, sir; it is not.

Q. What is the difference?

A. \$10,742.40. I should say that the stipulation shows a ten thousand additional item, which the letter given me by Mr. Kachlein does not. [799]

* * * * *

Mr. Le Sourd: Well, I do not think that an instruction to the Jury on this matter will cure the defect, if defect there be, so that I will leave that matter up to the Court.

I wish at this time to move for a mistrial, and renew our motion for severance based on the testimony of Mr. Eppler this morning to the effect that

(Testimony of Ira Eppler.)

Hans Forster said he relied on L. Hicks Taylor, and assumed that these were reported, referring to certain matters that were previously testified to.

Again, if the Court please, we move to strike that. I think he answered that before we had a chance to object. I think it was included in a question, and our motion was denied when we objected. I can't quite remember now, but, again, your Honor, let me point out that here was not an admission by a Defendant against his own interest. It is not, admittedly, under that exception to the Hearsay Rule.

It is simply a statement in which he admits nothing, but seeks to place blame on another Defendant, and, as such, it is improperly in the case.

This is the very thing that we called to [818] your Honor's attention before the trial began, which we knew was inseparable from this case, but your Honor reserved—denied it at that time, with the right to renew it later if it appeared at the trial that this happened, and this has happened and it will continue to happen, and we feel we are right in moving for a mistrial on this ground, and renewing our motion for a separate trial on this ground.

The Court: Of course, Mr. LeSourd, that assumes you are protecting the interest of your client, and are making these motions in good faith, and I so regard them. Nevertheless, while we are presented with, rather, possibly a difficult question so far as rules of evidence are concerned, it seems to me that we are still dealing with a transaction

(Testimony of Ira Eppler.)

which involves tax returns, involving a principle and two, perhaps, Agents, in one capacity or another, and it would seem that the matter should properly be tried as one issue, and we do have difficulty with rules of evidence, and I think that we will have to go ahead and use the best judgment that I have in admitting or ruling out things that seem to be improper, but I still don't believe—I am still not of the opinion that a fair trial cannot be had as to all defendants, and, therefore, until so convinced, would not grant a motion for mis-trial or severance [819]

* * * * *

Q. (By Mr. Griffin): Now, in your testimony today, as I understand you, you testified that there was some \$600,000 that went into the Daisy Ice Cream account, or deposits that were not accounted for, upon any of the books of Hans Forster, is that right? A. That is correct, yes, sir.

Q. And did you desire in that statement to leave the inference to the Jury that Mr. Forster then received \$600,000 cash for which there was no accounting?

A. My desire was to answer the question, which was asked me to which I responded.

Q. You were clearly cognizant of the inference, though, weren't you, that he had received six hundred thousand dollars of Daisy Ice Cream for which there was no accounting?

A. I believe what I said there was cash sales

(Testimony of Ira Eppler.)

which were not reflected in the books of Alpine Dairy or Issaquah Creamery.

Q. You meant, did you not, to leave the clear inference that he had received then six hundred thousand dollars in cash, Daisy Ice Cream, to himself not accounted for?

Mr. Moriarty: Objected to as not proper [833] cross-examination.

The Court: Objection sustained.

Q. (By Mr. Griffin continuing): Actually, the disbursements by Daisy Ice Cream Company, its costs, weren't shown, either, were they?

A. Portions of them were, I believe. The majority of them were not, however.

Q. Were not; you don't mean to say now that Mr. Forster received and retained six hundred thousand dollars in cash deposits, do you?

A. I am not meaning to say anything.

Q. The deposits to the account of the Daisy Ice Cream Company about which you have testified were expended by the Daisy Ice Cream Company in its cost of doing business, wasn't it?

A. I don't believe so, no, sir.

Portions were. Portions were not.

Q. Of this six hundred thousand dollars that you have referred to, have you made any computation as to what the profit of the Daisy Ice Cream Company was from the day it started until it ceased as the Daisy Ice Cream Company?

A. No, I have not.

Q. What was done, as you found in your inves-

(Testimony of Ira Eppler.)

tigation [834] of the monies or deposits that went into the account of the Daisy Ice Cream Company at Peoples Bank, which is—the ledger of which is Exhibit 91?

What was done with those deposits?

A. As near as I know, they were withdrawn as reflected in this exhibit.

Portions of these withdrawals I was able to trace to Mr. Forster's personal savings account, some twenty-four thousand.

Another portion I was able to trace to the succeeding bank account under the name of Alpine Ice Cream Company. The balance of the withdrawals, there was nothing possible to do with reference to the identification of them, because the checks, or at least, I was advised the checks, had been destroyed and no longer existed. There were no records showing what these expenditures were, so far as I know with the exception of purchases from Issaquah Creamery Company of mix.

Q. Do you know that the accountants for Mr. Forster made an examination of the books and records of Daisy Ice Cream Company to determine either the profit or loss as part of the Forster operations? [835]

* * * * *

Q. (By Mr. Griffin): Exhibit 155 has a note on it, "Consists of 51 rent receipts and 12 cancelled checks divided between years 1945 and 1949 by clips".

Do you recognize these as the rent receipts and

(Testimony of Ira Eppler.)

some 12 checks, it says "being for farm rental"; do you? [840]

A. I recognize these, yes, sir.

Q. And from whom did you receive those?

A. I never received them.

Q. Did Mr. Marx receive them?

A. No, sir; he did not. They were shown to us and we examined them.

Q. Well, at least, have you any recollection that these checks shown in exhibit 155 and the proceeds of the receipts in exhibit 155 were received by Mr. Forster and deposited in Account 198?

A. Some of the checks were deposited in 198. There is no way of knowing whether or not the currency received was deposited anywhere.

Q. And that rental was not returned on the income tax statements of Mr. Forster as prepared by Mr. Taylor, were they?

A. No, they were not.

Q. Exhibits 188 and 189 are checks for plastic cream. Those checks are shown on Exhibit 238, are they not?

A. They may be. I don't know.

Q. The same would be Milk Pool, 190?

A. I believe so. I can look at the exhibit and tell you.

Mr. Griffin: May I see 150 and 142, please?

Q. (By Mr. Griffin): I think you testified that Exhibit 152 are checks of Apex Farms payable to Issaquah Creamery and that some are in the payment of calendars?

(Testimony of Ira Eppler.)

A. I was told that that was what they were for, yes, sir.

Q. And are those checks shown on Exhibit 238?

A. I don't know.

Q. As going into the bank account of Mr. Forster?

A. If I may examine Exhibit 238, I can answer you on that.

Q. Very shortly; in Exhibit 150, checks of Finstad and Utgard to Issaquah Creamery, those were for purchases, were they not, of Issaquah Creamery, Glucose, and such things?

A. That is my understanding, yes, sir.

Q. They are shown on Exhibit 238, are they not?

A. I don't know. If you wish to give me the exhibit, I can refer to it, and tell you.

Q. Excuse me. Perhaps we can do that during the recess and save a bit of time.

Now, in these——

Mr. Griffin: Let me see Exhibit 65, please.

(Whereupon, exhibit was handed to Mr. Griffin.) [842]

Q. (Continuing): The check, did you make an investigation of this check shown in Exhibit 65?

A. I made certain inquiries about it, yes, sir.

Q. From whom?

A. I believe I talked with Mrs. Wilcox at Alpine Dairy about it. I am inclined to believe I talked with Mr. Erickson about it and I discussed it with the accounting firm, as well.

Q. Exhibit 65 is a check drawn on the Alpine

(Testimony of Ira Eppler.)

Dairy by Hans Forster, and I think you testified that Mr. Forster used the Alpine Dairy as a personal checking account, one of the two, Issaquah Creamery, Alpine Dairy; correct?

A. I believe I found that he used those accounts, yes, sir.

Q. It is a check to the Community Fund of Seattle, for \$2. What was the—it is a photostat of the check. You made several inquiries about that check. What was your interest in that check, particular check of two dollars?

A. I wanted to learn how it had ended up in Mr. Forster's personal account, rather than having gone to the Community Chest. It was deducted on the books as an expense of the company.

Q. What did you find out the check was for?

A. I believe Mr. Brody told me the other day that it had originally been issued to pay for a lunch that Mr. Forster planned to attend, but later found that he was unable to attend.

Q. In that investigation, however, of the Community Check two-dollar check, dated October 6, 1948, did your investigation go far enough to find out Mr. Forster contributed one thousand dollars to the Community Chest that year?

A. No, it did not.

Q. You made no inquiry in that regard?

A. I don't recall that I did, no, sir. [844]

* * * * *

IRA EPPLER

a witness called for and on behalf of the Plaintiff, and having been previously duly sworn, testified as follows:

Cross Examination—(Continued)

Q. (By Mr. Griffin): Now, as of Friday, we were examining primarily, if you recall, Exhibit 238, and the checks deposited to account 198; is that correct?

A. That is my recollection, yes, sir.

Q. And these were, as shown by the Exhibit, specific checks made payable to Issaquah Creamery and not recorded on the Issaquah Creamery books; that is correct, isn't it?

A. Well, some of the checks fell into that category, yes, sir.

Q. And deposited to Account 198. Now, today, I want to take these other exhibits, and I think that you said that you were familiar with, and at the request of Mr. Erickson he supplied you with, A-11 for identification, a list of the personal items; is that correct?

A. No, sir; he didn't supply that to me.

Q. What is A-11 for identification? [874]

A. I don't recall. I can glance at it and tell you. This is a list of personal expenditures of Mr. Forster which was charged as business expense, either to Alpine Dairy or to Issaquah Creamery.

Q. Who made up the list?

A. I believe the original was made up by Mr. Erickson, who said that it was.

(Testimony of Ira Eppler.)

Q. Who made the list A-11 that I hold in my hand?

A. I made a portion of it, and Mr. Marx made a portion of it, and I don't know who completed it. Someone else worked on it.

Q. But, that was made from the list supplied by Mr. Erickson?

A. Yes, I believe it was.

Q. And you went over that list in some detail in your direct testimony, you recall?

A. Yes, sir.

Mr. Griffin: Do you have 152, Mr. Bell?

The Clerk: I will check and see.

Q. (By Mr. Griffin): Now, of these personal items, there is Exhibit 152, a check to Hopper-Kelly, for a television set; is that correct?

A. Yes, sir. [875]

Q. And that was entered on the books by Mr. Erickson as a charge against Issaquah Creamery; is that correct?

A. That is my recollection, yes, sir.

Q. And I think you testified that with reference to that item that Mr. Erickson told you he made some inquiry about it and——

Mr. Griffin: Strike that.

Q. (By Mr. Griffin continuing): You inquired of Mr. Forster, I believe, and he had said jokingly that that should be charged to the Creamery because so many of the employees came over and viewed the—whatever you view in a television set, is that correct?

(Testimony of Ira Eppler.)

A. That is my recollection, yes, sir.

Q. Another item is 156, an invoice, Lake Washington Yacht Basin; is that correct?

A. Yes, sir.

Q. And that was charged by Mr. Erickson out on the books——

A. (Interposing) If I may see the exhibit on which the original entry is listed, I believe it is A-11, I can——

(Whereupon, Exhibit was handed to the witness by Mr. Griffin.) [876]

A. (Continuing) It is not contained on this list, but I can look at the check register for 1949 and I can trace it through and answer your question, however.

Q. Well, irrespective of how it was charged, it was charged as an expense of Issaquah Creamery and not Mr. Forster, wasn't it?

A. I am not certain. I can look at the books and tell you.

Q. Do you want the check register, did you say?

A. I believe I can find it in the check register, yes, sir.

Q. Handing you Exhibit 217—213—you want the date of that more than likely, June 6th, 1949, is the invoice?

A. Excuse me, what is the amount shown?

Q. Nine-ninety.

(Whereupon, there was a brief pause.)

Q. (Continuing) It might not be payable until July.

(Testimony of Ira Eppler.)

A. I was looking in the June accounts payable. It doesn't appear there.

Q. You wouldn't be likely to find it in June, would you? [877]

A. It is possible. I find it listed under the date of June 22nd, not in Issaquah Creamery, but Alpine Dairy books, charged to Account 9, which I believe Mr. Erickson referred to as Plant Expense.

Q. All right. Now, what book are you are looking at there in that exhibit 213?

A. This is the combined check register and journal for Alpine Dairy and Issaquah Creamery for the year 1949.

Q. Keep your finger where you found it, please. And plainly entered is Lake Washington Builder, is that?

A. It is not very clear. I believe it is intended to be Lake Washington Basin, Inc.

Q. \$990.00? A. That is correct.

Q. And Account 9, as you learned from Mr. Erickson, is where the items, as far as Alpine is concerned, is where the items that Mr. Forster purchased with Alpine checks, his own account, were generally charged, is that true?

A. Some of them were charged to that account, yes, sir.

Q. Most of them were, were they not?

A. A great many were. Others were charged to other accounts as well. [878]

Q. Now, Exhibit 159, three checks to Merrill, Lynch, did you ask Mr. Erickson why those checks

(Testimony of Ira Eppler.)

were charged, or, rather, not charged to Mr. Forster personally?

A. I believe I did, yes, sir.

Q. And did Mr. Erickson advise you that he thought that it was a proper charge at the time, that he didn't even know that Merrill Lynch were brokers?

A. I don't recall that he said that he thought it was a proper charge. He did say he didn't at first know that Merrill, Lynch, Pierce, Fenner and Beane were stock brokers.

Q. And——

A. (Interposing): I believe with reference to these same checks, he said that the bank called him up and told him to issue the checks for stock purchase, and that was the way that he learned that they were stock brokers.

Q. That is, it wasn't until—what he told you—after—after some time on this Merrill, Lynch account, Merrill, Lynch called up for additional funds and he went to the bank and got a draft, and that is when he learned that they were stock brokers?

A. My recollection is that he said the bank called him and said that Merrill, Lynch required [879] additional payments. I don't recall that he ever told me that Merrill, Lynch had called him.

Q. In the interrogation of Mr. Erickson on October 24, 1950, to which you have testified, did you, in the presence of Mr. Marx, and with Mrs. Stokie the conference reporter present, ask this question:

(Testimony of Ira Eppler.)

Do you have those before you?

A. Yes, I have.

Q. Beginning with Question 202, you were inquiring, were you not, about the Merrill, Lynch account?

A. I believe the question 202 refers to Washington State Bank and Merrill, Lynch.

Q. All right. Now, in view of your answer, I will ask you if this is—if you did not ask this question:

“There are a number of checks paid to Washington State Bank and to Merrill, Lynch, Pierce, Fenner, and Beane, apparently for the purchase of stock. Could you explain how these were changed to business expense * * *”

A. I believe it is “charged to business expense”.

Q. Continuing “* * * charged to business expense * * *” [880]

A. Yes, I did.

Q. “The same thing applied, that there was no other place to put them,” is that the answer?

A. I believe that is the answer made, yes, sir.

Q. Did you ask this question:

“You were aware that Merrill, Lynch, Pierce, Fenner, and Beane were stock brokers, weren’t you?”

Did you ask that question?

A. Yes, I did.

Q. And the answer:

“Not for some time.”

A. That is the answer he made, yes, sir.

(Testimony of Ira Eppler.)

Q. And the question:

"What kind of expense did you think this was, and who did you think they were?"

Did you ask that question?

A. I think I did.

Q. And he answered:

"I wouldn't know offhand."?

A. Yes, he did.

Q. "How did you find out they were stock brokers?" that was asked by you? [881]

A. Yes.

Q. And this answer:

"I think at the time they called to get some additional money, I went to the bank and got a draft for it."?

A. That is the reply he made.

Q. So that it was Merrill, Lynch that called, and not the bank?

A. My recollection was that he said the bank called.

Q. He also told you, did he not——

Mr. Griffin: Strike that.

Q. (By Mr. Griffin continuing): You also inquired from him why he continued to make the charge as a business charge after he found they were stock brokers?

A. I believe I did, yes, sir.

Q. And he told you that he did not know that the Issaquah Creamery was not purchasing stock from them, didn't he?

A. I believe he made such a reply, yes.

(Testimony of Ira Eppler.)

Q. Now, his general position with you was at all times that there simply wasn't any place in the Issaquah Creamery books, as set up, to make a charge against either Forster's personal salary or drawing [882] account, didn't he?

A. That is more or less what he said, yes, sir.

Q. Now, I hand you Exhibit 160, which is the check to Ryan Cadillac Company, and what was that check charged to on the books of the corporation?

A. My recollection is it was charged to truck expense.

Q. Did you ask Mr. Erickson for an explanation of that charge? A. Yes, I did.

Q. And what did he tell you about it?

A. My recollection of his explanation as to why this was charged to truck expense was that that was where he thought it should be charged at that time, that after thinking about it, that were he making another entry, he would charge it to Equipment.

Q. And he insisted, did he not, that it should be in either one place or the other, and he thought on re-thinking about it, it should have gone under Equipment and not Trucks?

A. I don't recall that he insisted, but he did say that were he making a charge at the time I was talking to him about it, he would charge it to Equipment, rather than Truck Expense.

Q. And didn't he say it was just a mistake in

(Testimony of Ira Eppler.)

[883] the first instance to have charged it to Trucks rather than Equipment?

A. He may have said something like that. I don't recall specifically.

Q. And then did you interrogate him as to why he should charge a Cadillac automobile to the Issaquah Creamery at all?

A. I believe I did, yes, sir.

Q. What did he say?

A. I don't recall that he made any specific explanation on the Cadillac itself. He may have, but he referred generally to all these personal expenses simply saying he didn't have any other place in the books to charge them.

Q. Didn't he say to you that the Alpine Dairy was all Hans, rather using the term Hans instead of Forster; that the Alpine Dairy was all Hans' business; did he say that to you?

A. Yes, he did.

Q. That the Issaquah Creamery was all Hans' business; did he say that to you?

A. I recall he said that the corporation belonged to Mr. Forster, yes, sir.

Q. And that he made no distinction in bookkeeping between the two? [884]

A. At times he did say that, yes.

Q. Now, let's go to the Cadillac specifically. Question 330. That is right after he said it should be in Equipment. 329.

Question 330:

(Testimony of Ira Eppler.)

“Did you think this was equipment for the Dairy or for the Corporation?”

By the “Dairy”, you are referring to Alpine, is that correct?

A. I believe I was, yes, sir.

Q. And the corporation, you were referring to Issaquah.

“Was it proposed in any way that Mrs. Forster’s private automobile be used in connection with the business?”

Was that question asked?

A. Yes, it was.

Q. And did not Mr. Erickson say in answer:

“It was Hans’ business and if he wanted a car * * *”

Is that his answer?

A. That is correct.

Q. Then your question 331:

“He already had a Cadillac automobile himself, didn’t he, prior to the purchase of [885] this one? You knew about that, didn’t you? You clearly understood that this automobile wasn’t going to be used in the business, didn’t you?”

A. I asked such a question, yes, sir.

Q. And he answered:

“Yes”?

A. He answered that.

Q. “And then what was your purpose in charging it into business expense or into business equipment?”

Did you ask that question?

(Testimony of Ira Eppler.)

A. Yes, sir.

Q. And he again answered:

“It was Hans’ business.”

Did he answer that?

A. That is the answer he made at that time, yes, sir.

Q. Now, these checks, Exhibit 161 to Ed’s Kennels, for dog training, were charged as a company expense?

A. That is my recollection, yes, sir.

Q. Do you know whether or not the dogs were ever used on company business?

A. I believe I inquired about it, and was told [886] they were not.

Q. Who did you inquire from?

A. I think I asked Mr. Erickson.

Q. Do you know whether or not they were used in hunting, and entertaining of customers?

A. I have no knowledge of it, no, sir.

Q. Now, on the books of the Issaquah Creamery Company, these journals that were set up in the Issaquah office under Erickson in charge with the other bookkeepers there, was there any page, or any column, in that set-up to make a charge against Mr. Forster personally? A. Yes.

Q. And what was the column in the books, and will you tell me what——

A. (Interposing): I believe they could have properly gone in the miscellaneous column. That is the way he was using his check register.

He put all the others that didn’t fall within

(Testimony of Ira Eppler.)

Sundries, Accounts Receivable, Accounts Payable, and Cash and Payroll, and Issaquah for Alpine and Alpine for Issaquah, whatever the case may be, he put all the other charges in the Miscellaneous Column.

Q. Let me see if I understand you.

Did you say you think it was correct to [887] put these charges in the Miscellaneous column?

A. I am merely saying that that is where he put them.

Q. That was not my question, sir.

I asked these charges, some of them at least, should have been made against Hans Forster personally, shouldn't they, whether a drawing account, salary account, or whatever you may call it?

A. That is my belief, yes, sir.

Q. Now, my question is:

"Where, on the books in the Issaquah Creamery Company, was there any account, any page, or any column to charge those items against Hans personally?"

A. The miscellaneous column could have been used for that purpose.

Q. I didn't ask you that, and I ask that the question be read, if the Court please.

The Court: Which question are you referring to?

Mr. Griffin: The last one. I didn't ask what could have been done.

The Court: Mr. Reporter, read the question.

(Testimony of Ira Eppler.)

The Witness: I am sorry. I misunderstood your question, then. [888]

The Court: Mr. Reporter, read the question.

(Whereupon, the following was read by the Reporter:

“Question: Now, my question is: ‘Where, on the books in the Issaquah Creamery Company, was there any account, any page, or any column to charge those items against Hans personally?’ ”)

A. I think I would have to let my answer stand from my understanding of your question.

Q. (By Mr. Griffin): Well, to have charged them in the Miscellaneous Account is exactly what he did, isn't it?

A. I didn't say charge them to miscellaneous account, but in the miscellaneous column.

Q. Well, in the miscellaneous column, that is precisely what he did, isn't it?

A. He listed them in that column, yes, sir.

Q. That didn't constitute a charge against Forster personally, did it?

A. No. He designated the charges by numbers in front of the dollar items. I believe there is in evidence a chart of accounts which shows the numerous accounts and numbers which he used.

Q. I will come to that chart. I am talking [889] about the books now that he used.

A. As I said before, my understanding is that that chart of accounts is a part of the books. You can't understand the books, without having reference to it, at any rate, since the numbers listed in

(Testimony of Ira Eppler.)

his miscellaneous column refer to those accounts, and they don't appear in this particular journal.

Q. I hand you 258, and you say that this is a part of the books, do you?

A. That is my——

Q. (Interposing) And, speaking of books, sir, I am speaking of documents like this, and this, and this, and this; that is part of the books, is it?

A. That is my understanding, yes, sir.

Q. Well, where on the books of Issaquah Creamery, sir, was there any item that said "Forster"?

A. There is nothing on the books which says that.

Q. But item 107 on this card that you have just referred to, Exhibit 258, says Hans Forster, doesn't it?

A. That is a part of the Alpine chart, rather than the Issaquah chart.

At least, that is the way it is headed at the top.

Q. Issaquah Creamery Company, Incorporated, Schedule of Accounts, and Issaquah and Alpine.

Now, my question then goes back, Exhibit 107 is Hans Forster in Alpine and there isn't any Hans Forster account at all on the left-hand side of this column from items 1 to 40, numbers 1 to 40, and filled out 1 to 37 for Hans Forster, is there?

A. No, there is not.

Q. There is no place, then, if this is part of the bookkeeping system, as they were kept, with which to make a personal charge directly to Hans For-

(Testimony of Ira Eppler.)

ster, is there, unless you throw it into some account other than Hans Forster, Personal?

A. I don't believe I can answer that question with a "yes" or "no"; I can elaborate, if you wish.

Q. Well, you have referred to this 258 and under "Issaquah", the first item is "Milk", isn't it?

A. It may be. I can look at it, and tell you.

Q. Will you look at it and tell me that item No. 1 is Milk? A. Yes, No. 1 is milk.

Q. And item No. 2 is Cream?

A. That is correct.

Q. And item No.—supposing you read them and tell the Jury. [891]

A. For Issaquah, one is Milk, two is Cream, three Butter, four Skim, five Cheese, six Condensed, seven Mix, eight Miscellaneous, nine Supplies, ten, Holly, eleven Beer, twelve Wine, thirteen Hops, fourteen Wages for Plant, fifteen for Truck, sixteen Wages for Office, seventeen Wages for Garage, eighteen Rent, nineteen Power and Light and Fuel, twenty Truck Expense, twenty-one office expense, twenty - two Repairs, twenty - three Advertising, twenty-four Insurance and Industrial Insurance, twenty-five Life Insurance, twenty-six Interest, twenty-seven Legal and Auditing, twenty-eight Bad Checks, twenty-nine Discount and Allowances, thirty Old Age Tax, thirty-one Unemployment Tax, thirty-two Excise Tax, thirty-three Other Taxes, thirty-four Bad Debts, thirty-five General Expense, thirty-six has been written in manually for Dues, thirty-seven likewise written in manually for Travel

(Testimony of Ira Eppler.)

Expense, thirty-eight blank, thirty-nine blank, forty blank.

Do you wish me to read the others?

Q. No, I don't care about the Alpine.

Where now on this Exhibit 258 that you say is part of the books from items one to thirty-seven, inclusive, is there—was there any place on the books themselves to charge the personal account of Hans [892] Forster?

A. Well, it could have been charged to his salary, if you want to limit it to just those accounts.

Q. Did you read any salary account from items one to thirty-seven?

A. My recollection is that I did, number fourteen is Wages, Plant, number fifteen is Wages, Truck, number sixteen, Wages, Office, number seventeen Wages, Garage.

Q. All right.

A. I assume that you could consider Wages salary if you wanted to.

Q. You make no distinction between wages and salary, is that right?

A. Oftentimes, bookkeeping systems don't.

Q. But now, in fairness, relative to all the books they had up there, there wasn't either a separate book or a separate account for Hans Forster personally, was there? A. Not in Issaquah Creamery.

Q. Not in Issaquah, and there wasn't one in Alpine that had been used for years, was there?

A. Well, there was one which had been used. I don't know what you mean by "for years".

(Testimony of Ira Eppler.)

Q. For any years it had not been used; it was [893] used when first started for about two years when Alpine just started, and then the bookkeeping department just simply ceased using it, didn't they, as you examined the books?

A. The last time that it was used that I can recall offhand, was in 1943.

Q. Yes.

A. For the purchase of the farm.

Q. Now, let's take this group of checks, Plaintiff's Exhibit 162, which are all to the Mass.—162, 163, 164, 165, 168, 169——

Mr. Griffin: 196 and 197.

(Whereupon, exhibits were handed to Mr. Griffin.)

Mr. Griffin: 197.

The Clerk: 96 in there, Mr. Griffin.

(Whereupon, there was a brief pause.)

Q. (By Mr. Griffin continuing): 162 to 169, inclusive, 199,——

Mr. Griffin: Don't mind 196.

Q. (By Mr. Griffin continuing): All checks for life insurance premiums but both Alpine Dairy checks in some instances and Issaquah Creamery in others.

Now, I have 196, which are all Issaquah [894] creamery checks to West Coast Life.

Those were all premiums upon life insurance for Mr. Forster, weren't they?

A. That is my understanding, yes, sir.

Q. And to what account were they charged,

(Testimony of Ira Eppler.)

insofar as those drawn by Issaquah Creamery were concerned?

A. I believe they were charged to Insurance Expense.

Q. And where, on the books of the Issaquah Creamery Company, was there any place provided in the books themselves, the journals, to charge those life insurance premiums to Hans Forster personally?

A. No provision had been made, I believe.

However, as to a place to do it, these blank lines had been filled in with some accounts. I believe that one of those lines could have been filled in with a Hans Forster account also.

Q. Yes, you are speaking of lines upon this Exhibit 258? A. Yes, I am.

Q. That isn't where the records are made, is it? The records are in these books in evidence, and that is what I am talking about. [895]

A. I think that is a part of the records.

Q. Well, they might have been charged to Pop, using that as Hans Forster, item 13?

A. No, the blank lines is what I referred to which have not been filled in.

Q. But nobody filled them in in the bookkeeping department, did they?

A. This doesn't indicate that they did, no, sir.

Q. Two items were filled in in Exhibit 258, the item 36 Dues, and 37 Travel Expense, is that right?

A. That is correct, yes, sir.

Q. Do you recognize the handwriting?

(Testimony of Ira Eppler.)

A. It might have been Mr. Erickson's, but I would need to compare it with samples to come to any conclusion.

Q. As a matter of fact, it wouldn't have been—or, rather, would have been a very simple matter to have had an item 38 or 39 or 40, or any number that you want to take, for a personal account for Hans Forster on the books of the Issaquah Creamery Company, wouldn't it?

A. That would have been a simple matter, yes, sir.

Q. And by putting on the books, whether it was [896] on this chart or not, it would have been a very simple matter—it would have been a very simple matter to either use a page in a journal or an entire journal for Hans Forster's personal affairs, wouldn't it?

A. It would have been handled any way the bookkeeper wished to do it.

Q. It still was a very simple transaction?

A. That is correct.

Q. Mr. Forster told you that he thought, and always had, that these matters were charged to his personal account, didn't he?

A. That is what he stated, yes, sir.

Q. Now, with these items of Lodge Dues—
Mr. Griffin: Strike that.

Q. (By Mr. Griffin continuing): Of these insurance premiums just referred to, Mr. Erickson told you again that he just had no other place to put them?

(Testimony of Ira Eppler.)

A. That is generally the explanation that he made of all of these, yes, sir.

Q. Now, Exhibit 176, Exhibit 176 is a check of Alpine Dairy to the Providence Hospital; correct?

A. That is correct, yes, sir.

Q. Now, I am handing you Exhibit 248 and I think [897] you called these check registers. I am not sure whether it is check register or journal.

A. It is a combined check register and journal, I believe.

Q. And I call your attention to March, 1945, and Exhibit 176, the check to the Providence Hospital, clearly entered in the journal at line what?

A. It is listed on line 22.

Q. And what does it say?

A. It says Providence Hospital.

Q. And the amount? A. \$142.25.

Q. And the date?

A. The date is blank, but at the top is March 10th.

Q. March 10th?

A. Opposite it on the opposite page of Line 22, it says 23, for the account number, and the amount \$142.25 has the debit to Miscellaneous, presumably a debit to Account 23.

Q. Which is Miscellaneous?

A. I don't believe so, no, sir.

Q. Was that Issaquah or Alpine?

A. This is Alpine.

Q. Advertising? [898]

(Testimony of Ira Eppler.)

A. It could well be; yes, Account 23 is Advertising for Alpine Dairy.

Q. The entry Providence Hospital, charged to Miscellaneous in the Miscellaneous column, item 23, it is just about as plain as anything could be, look at that page, or that entry, that it couldn't be advertising?

A. It could have been, yes, sir.

Q. It could have been?

A. There is no way of knowing from looking at that page that it was charged to Account 23.

Q. That is, that Alpine—that is, that Providence Hospital was advertising for Alpine Dairy, is that what you mean to say?

A. That that particular check was issued to pay for some type of advertising.

Q. To the Providence Hospital?

A. Yes, sir.

Q. To the Providence Hospital?

A. It could well be.

Q. It wouldn't cause you any curiosity at all to find a check to the Alpine Dairy to Providence Hospital charged to Advertising?

A. It might, yes.

Q. It did, too, didn't it? [899]

A. I don't recall that I had looked at this entry until Mr. Erickson had discussed it with me and told me it was a personal item.

Q. Now, Exhibits 174, -75, -78, 185, are all checks for Dues to Lodges, are they not?

A. May I see them?

(Testimony of Ira Eppler.)

Q. Yes, surely. I withdraw 185 from that list. Are all Dues, are they not?

A. That is my understanding, yes, sir.

Q. And on this card you referred to, Exhibit 258, that is one of the two items written in, 36 Dues, is that right?

A. That is my recollection, yes, sir.

Q. Item 181—my previous question, 185 was also—I find there are three exhibits on this one sheet. 185 also included Dues items?

A. I believe so, yes, sir.

Q. Now, 181 is a check of the Issaquah Creamery Company to Klopfenstein's; is that correct?

A. Yes, sir.

Q. And where was that charged?

A. If I might examine the list which we have been referring to, Mr. Erickson's, I can answer your question.

Q. A-11—— [900]

A. (Interposing) Probably that is the number.

Q. (Continuing) ——for identification?

A. It is charged to Account 9, Plant Expense.

Q. Plant Expense, and Exhibit 179 is the statement of Klopfenstein's, isn't it?

A. I believe so, yes, sir.

Q. And there wouldn't be any plant expense in connection with the purchase of shorts or a tuxedo, would there? A. Not ordinarily, no, sir.

Q. And yet it is charged as an item of the Issaquah Creamery as you find it on the books?

A. That is correct.

(Testimony of Ira Eppler.)

Q. Now, Exhibit 182 is a check to Washington Athletic Club with an accompanying statement identified as the cost of the wedding reception and so forth? Is that correct?

A. That is correct, yes, sir.

Q. Where, generally, were the Washington Athletic Club charges made on the books?

A. I don't know.

Q. You didn't examine the books to see where the Washington Athletic Club charges were?

A. I examined the books to see where that particular charge was. [901]

Q. But not where the charges were generally?

A. No, sir. There may not be any other Washington Athletic Club charge payments on the books. I simply don't know.

Q. You don't know that Mr. Forster had been a member of the Washington Athletic Club for a great many years?

A. I had recently heard that he has been on some basis, yes, sir.

Q. And you didn't know or find out why he asked for a separate statement from the Washington Athletic Club, this statement I hold in my hand, for these wedding costs; you didn't inquire about that?

A. I didn't make such an inquiry, no, sir.

Q. The statement itself from the Washington Athletic Club carries no dues charges, does it; the statement for two items of expense?

(Testimony of Ira Eppler.)

A. It doesn't appear to carry any charge for Dues, no, sir.

Q. Did you make any inquiry of Mr. Erickson as to why that charge—by the way, the charge was to Advertising, wasn't it?

A. That is my recollection, yes, sir.

Q. And did you make any inquiry of Mr. Erickson as to why it was charged to Advertising? [902]

A. Yes, sir.

Q. What did he say?

A. I don't recall specifically just what he did say. Among other things, he said that it was a personal expense, however.

Q. Do you want to examine Questions 208 to refresh your recollection, and particularly 212 and 213?

He told you that he not only thought that it was a proper charge for advertising, but he was there and thought it was, didn't he?

A. Among other things, he said that, yes, sir.

Q. And so he charged it to Advertising?

A. He said that he charged all the Washington Athletic Club items to Advertising.

Q. I thought you just suggested a moment ago that you didn't know anything about other items?

A. I don't. He said he did.

I don't know whether he did or not, however, because I didn't check them.

Q. Now, Exhibits 183 and 228 are Alpine Dairy checks to Ben Bridge and Jensen and Nielsen, are they not?

A. Yes, they are.

(Testimony of Ira Eppler.)

Q. They are all for jewelry, as you investigated, or to jewelry repairs, are they not? [903]

A. Mr. Erickson told me they were for personal jewelry. I didn't investigate as to what they were for beyond his explanation.

Q. You didn't inquire as to what—whether that jewelry was being used, any of it, for the employees, customers, or anything on Advertising?

A. No, I did not.

Q. Now, those checks were drawn on Mr. Forster's personal account in which there was no corporation involved, weren't they?

A. They were drawn on the business account of Alpine Dairy, not Mr. Forster's personal account.

Q. I think you have testified before that Mr. Forster used the Alpine Dairy account for his drawings and cashed checks there on that account, didn't he? That was the account he used?

A. I don't know whether he cashed checks there or not.

A number of checks were used by him, yes, sir.

Q. And when he bought jewelry, or when he bought anything he would buy, whether groceries or something else, he generally drew a check on Alpine Dairy, Mr. Eppler, didn't he?

A. I don't know. [904]

Q. On jewelry then, he did, didn't he?

A. These checks were issued to the jewelry firms. I don't know what other jewelry he purchased or how he paid for it.

(Testimony of Ira Eppler.)

Q. And yet with that staff of forty bookkeepers or so at Alpine Dairy, not a single item of jewelry was charged to Mr. Forster's personal account, was it?

A. Well, the staff of forty had nothing to do with the charging.

Mr. Griffin: Would you read the question?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. (Continuing) I don't think I could answer that with "yes" or "no." I can elaborate, if you wish.

Q. (By Mr. Griffin continuing): Add the staff at Issaquah Creamery Company and no one there charged any portion of that jewelry to Mr. Forster's personal account, did they?

A. These items were not charged to his personal account, no, sir.

I don't know how they charged other items. They may have. [905]

* * * * *

Q. Now, Exhibit 186 is a check of Alpine Dairy to Globe Optical, correct?

A. Yes, it is.

Q. And to what account was that charged?

A. It was charged to Account 9, Plant Expense.

Q. Account 9, Plant Expense; and I hand you Exhibit 249, that is the account book of what?

A. This is the combined check register and journals for Issaquah Creamery and Alpine Dairy.

(Testimony of Ira Eppler.)

Q. And for?

A. For 1946, I believe.

Q. And I have it open now to April, 1946, and what is the top numbered page five for April—is that Alpine or Issaquah?

A. I believe it is Alpine.

Q. Do you find the Globe Optical charge [908] entered?

A. Yes, I do.

Q. And what does it say?

A. It says "Globe Optical."

Q. And the amount?

A. \$180.

Q. And two lines below that is a Klopfenstein charge?

A. That is correct.

Q. Neither of those could well be Plant Expense, could they?

A. They could be, yes, sir.

Q. They could be; that is, anything could be Plant Expense, is that right?

A. With a business of this magnitude, yes, sir, I believe so. Any check issued in there to someone, any company, or firm, in Seattle could be a business expense of some kind.

Mr. Griffin: Exhibits—there are three exhibits on this one sheet, if the Court please.

Q. (By Mr. Griffin): Exhibit 187, that is to Douglas Fox, the Travel Agency?

A. The payee is Douglas D. Fox, yes, sir.

Q. And that could be—that could be Travel Expense [909] could it, of Issaquah Creamery?

A. It could be, yes, sir.

(Testimony of Ira Eppler.)

Mr. Griffin: I am looking for 191, -2 and -3. I have 194.

(Whereupon, there was a brief pause.)

And Exhibits 191, -2, -3 and -4. 192, this is the one I want. I don't need 191.

Q. (By Mr. Griffin): 192, 193 and 194 are all checks to Thurston's Laundry, is that correct?

A. Yes, they are.

Q. Do you know whether any of that dry cleaning was a company expense, or not?

A. I don't know, no, sir. Mr. Erickson said these were personal items, however. [910]

* * * * *

Mr. Griffin: 259 and 259-A.

Q. (By Mr. Griffin): You might tell the Jury as you look at them what they are so that they will have those in mind.

A. 259-A is headed Issaquah Creamery Company, Balance Sheet, November 30, 1949. The only recollection that I have with reference to this particular sheet is asking Mr. Taylor about it, if this was his sheet for that month, and he said that it was. I don't recall any other discussion about it.

On the second exhibit, 259, which is headed Issaquah Creamery Company, Trial Balance, December 31, 1949, and Profit and Loss, December 31, 1949, I don't recall anyone calling it particularly to my attention. I know that Mr. Marx and I went over it with Mr. Taylor and discussed it with him.

Q. And what are the two sheets; what was the

(Testimony of Ira Eppler.)

matter in the sheets so the Jury will have them before them that you discussed with Mr. Taylor?

A. Well, in the first one, as I have already mentioned, I simply asked if that was his work sheet for the month of November. The second one, we discussed [917] with him the items which had been changed and altered and added in the Issaquah Creamery books at the end of 1949.

Q. And what were the items on them that you are referring to that had been changed, altered, and added?

A. The ones which we discussed with him were the ten thousand dollar milk draft and the fifty-one thousand dollar plus item of Consolidated Dairy, or eighteen thousand plus item to R. L. Stephenson Company. However, those don't all appear on this sheet.

Q. Which ones upon this sheet—pardon me a second. Which ones do appear upon the year-end statement of December 31, 1949, Exhibit 259?

A. Opposite accounts payable, there is a figure written in in the blank column in the same amount as the Consolidated Dairy item.

Opposite Milk Draft, there is an item written in likewise, in the same amount as the changes in the books.

Q. Now, did Mr. Taylor make the changes, additions and alterations in the ledger of the Issaquah Creamery Company?

A. I believe he did, yes, sir.

Q. And in his own handwriting?

(Testimony of Ira Eppler.)

A. I think so. [918]

Q. He did not, however, make any changes of that nature of correction, or otherwise, in Exhibit 259, being the November balance sheet for 1949, did he?

A. I don't believe so, no, sir.

Q. Now, you discussed that matter with Mr. Taylor, and he advised you, as I recall, that Mr. Forster had been disturbed about a statement as prepared by Mr. Taylor and Taylor talked with Erickson, and eventually Erickson called him back and said they found an error and to make the change; does that summarize your testimony in detail?

A. I believe Mr. Taylor called Erickson, rather than Erickson calling Taylor, but otherwise, that is the essence of what he said, I believe, yes, sir.

Q. Now, did you discuss with Mr. Forster what had occurred at the time of this conversation with Taylor and with Erickson at the plant?

A. I believe I did, yes, sir.

Q. And what did Mr. Erickson—what did Mr. Forster say?

A. Well, among other things, I believe he said that when the net profit figure was given to him, that he took exception to it and said that it [919] couldn't be that much.

Q. Now, when the net profit figure was given, he told you this, didn't he, that——

Mr. Griffin: Strike that.

Q. (By Mr. Griffin continuing): First, you——

(Testimony of Ira Eppler.)

Taylor—both Taylor and Erickson advised you, did they not, that Taylor would come out to the Issaquah Creamery plant about the third week in the month to go over the journals to make up the statement for the previous month; that was the routine?

A. My recollection was that it was the last week of the month.

Q. The last week of the month, all right; so this statement—the November 30, 1949, work sheet of the Issaquah Creamery, if the ordinary routine had been followed, would have been the last week in December; he would be out examining the journals and making up the November statement?

A. Well, my understanding of what has been told me is that it would be at the end of November, not at the end of December. The explanation given to me was that at the year-end—that is, of the entire year—that the visit was usually made at the end of January, and that otherwise, it was at the end of [920] whatever month was in question.

Q. How could he make up a statement for November until November was over?

A. By using whatever data was given to him.

Q. How could he make a statement for the month ending November 30 during any time during the month of November?

A. Well, as I have said, by using whatever data he had.

Q. Mr. Forster told you, did he not, that when Taylor—

Mr. Griffin: Strike that for the moment.

(Testimony of Ira Eppler.)

Q. (By Mr. Griffin continuing): This work sheet prepared by Mr. Taylor, Exhibit 15—259-A shows a loss for the month of November of approximately ten thousand dollars, doesn't it?

A. Yes, slightly less than ten thousand.

Q. Mr. Forster told you that when Taylor came out with the year-end statement, or for December, that he asked Taylor what the situation was, and Taylor told him there would be a profit of around twenty thousand dollars during December, didn't he?

A. I don't remember what specific figures he mentioned. [921]

Q. Did he mention specific figures?

A. He may have. I don't recall.

Q. I will help you in just a moment, then.

A. I didn't mention any specific figures to him, and he wasn't at that time interested in any specific figures. He may have. I do not recall.

Q. I am just talking about what he told you. I will ask you if Mr. Forster didn't say to you in substance this, in your inquiry about this matter:

That when Hicks Taylor came out to Issaquah the latter part of January to make out the profit and loss statements for the month of December, he gave me a figure that I recall was around twenty thousand dollars.

He gave that out of his work sheet, and told me it would look like twenty thousand dollars profit, and I told him that I could not see how we could have made that much money during the month of

(Testimony of Ira Eppler.)

December when November there was a loss of ten thousand dollars and December is the poor month of the year.

There must be something wrong with his figures, and to go back and re-check them. In substance, is that not what Mr. Forster told you?

A. That could well be. I don't remember the twenty thousand figure, however. [922]

Q. And didn't he tell you also that the sales in 1949 were approximately the same as in 1948?

A. He may have. I don't remember that he did, however.

Q. And he also told you—or, rather, and as you knew from the income tax returns, that Taylor's year-end statement was showing a profit two or three times what the 1948 profit had been?

A. He may have. I don't recall that he compared the two years.

Q. And he told Taylor that there must be something wrong with his figures and to go and check them; the latter we agree on?

A. Yes, I distinctly recall that portion.

Q. And it was subsequent to that time that Taylor made the changes in the ledger and this work sheet, Exhibit 259?

A. So I have been told, yes, sir. [923]

* * * * *

Q. And one of the items that you talked to him about was the manner of handling the payments of wages to Mr. Forster's children, was it not?

(Testimony of Ira Eppler.)

A. That was one of the items I talked to him about, yes, sir.

Q. And on the books of the Issaquah Creamery company, under Payroll, was listed at times the children of Mr.—of Mr. Forster, weren't there?

A. So I was advised by Mr. Erickson.

Q. And you examined them and found that to be correct; didn't you?

A. No, I did not.

Q. You did not; did you examine to ascertain whether any or all of the children had been employed at Issaquah Creamery?

A. Yes, I did.

Q. And you found they had?

A. At times, they had been, yes, sir.

At least, so I was told.

Q. And the real question and purpose of your inquiry was why they had been carried, or some of them, [928] on the payroll after their actual work in the plant had ceased, wasn't it?

A. I believe the purpose of my inquiry was to determine why they were carried on the payroll while abroad and finishing school.

Q. When their work at the plant had ceased, is my question.

A. That is correct. At least, I assumed it had ceased.

Q. And what did Mr. Erickson—you interrogated Mr. Erickson about that?

A. I asked him about it, yes, sir.

Q. And what did he say?

(Testimony of Ira Eppler.)

A. I don't recall exactly what he did say. His answers weren't very clear to me.

Q. I see, all right; now, referring to Question 312, you say his answers weren't clear, did you ask this question:

"Did you make out these pay checks to the Forster children during the winter months when they were not working there?"

Did you ask that question?

A. That is one of the questions that I asked, yes, sir.

Q. And he answered "Yes"?

A. That is the answer he gave, yes. [929]

Q. Was that clear?

A. That part was clear, yes, sir.

Q. Did you ask him who instructed him to do that?
A. Yes, I did.

Q. And he said Hans did?
A. Yes, he did.

Q. Was that clear?
A. That was clear.

Q. 315:

"Then you knew that was an improper charge to Business Expense?"

To which he answered:

"I did not understand it that way."

Is that clear?

A. That is the answer he made.

Q. Is that clear?

A. That portion is clear, yes, sir.

Q. Question 316:

"What did you understand was the purpose of these checks that they were not working for? Obvi-

(Testimony of Ira Eppler.)

ously, if they wanted money, they could ask their father for it."

And his answer:

"You got me there." [930]

Was that clear?

A. I don't think that is a very clear answer to the question, no, sir.

Q. And then Mr. Marx takes over, you were present:

"Did you think it might have been done for income tax advantage?"

And his answer:

"No, they were both paying their income tax."

Is that clear?

A. Standing alone, yes, sir; that was clear. However, he had said a number of other things in connection with this which makes his answer not clear.

Q. Question 318:

"I mean income tax advantage insofar as Mr. Hans Forster was concerned?"

His answer is:

"No."

Is that clear?

A. That is clear.

Q. And then you took over, Question 319, didn't you? A. Yes, I did.

Q. And, that is, you were both asking him [931] questions like that, weren't you?

A. We were both asking him questions, yes, sir.

Q. "What did you think the purpose of these

(Testimony of Ira Eppler.)

checks was for; did you think it was a proper charge of the business?"

And he answered:

"So far as I was concerned, they were."

Is that clear?

A. That is the answer he made, yes, sir.

Q. Is that clear?

A. It is clear that he made such an answer, yes, sir.

Q. Is the answer clear?

A. I believe I had just finished saying a moment ago with reference to the other things he said the answers he was making to these questions wasn't entirely clear, no, sir.

Q. The next question, 320:

"Did you make out a check to your own children, for instance, if they were not working there?"

Answer:

"They worked there part of the time."

Is that clear?

A. It wasn't an answer to my question. [932]

Q. So then Mr. Marx takes over, and you were advised during that examination that as far as Erickson was concerned, tax deductions were taken from out the payroll of the children and paid to the United States Government, weren't you?

A. I don't believe Mr. Marx asked such a question, no, sir.

Mr. Griffin: May I have the question read, please?

The Court: Mr. Reporter, read the question.

(Testimony of Ira Eppler.)

(Whereupon, preceding question was read by the reporter.)

A. (Continuing) As I said, I don't believe Mr. Marx asked such a question.

Q. (By Mr. Griffin): Question 321. He did ask this question, didn't he:

"Mr. Erickson, have you ever heard the expression 'padding the payroll'?"

A. Yes, he asked such a question.

Q. Mr. Erickson answered:

"I read it in Drew Pearson's column."

A. Mr. Erickson made such a reply, yes, sir.

Q. The reply is clear, isn't it?

A. Yes, that portion is clear. [933]

Q. "How long ago did you read that?" "Answer: A few days ago."

Is that clear?

A. That is clear, yes, sir. .

Q. "You have heard of the expression before, have you not. It is a fairly common expression."

"I probably have."

Is that clear?

A. That portion is clear, yes, sir.

Q. "Wouldn't this be a very good instance of padding the payroll?"

"Answer: From all appearances now, but I had not given it any thought before."

Is that answer clear?

A. That answer is clear, yes, sir.

Q. And then this one, sir:

"It would appear to you that somebody at some

(Testimony of Ira Eppler.)

time had the idea of padding the payroll of the corporation by putting the children on as employees when they performed no actual service?"

And he answered:

"No, I do not think that thought occurred to me because the income tax payments of the children was withheld each month." [934]

Is that answer clear?

A. That answer is clear, yes, sir.

Q. And, by being withheld each month, it was clear to you that that was the tax withholding required by the Government to pay those taxes?

A. I am not sure it was clear to me what he was talking about. If tax was actually withheld, the presumption would be withheld on the payroll payments made.

Q. But you didn't know what he was referring to. Let's see now, you have been with the—eight years you had been with the Department?

A. That is right.

Q. And in the Criminal Division, and you didn't know what Harold Erickson was referring to when he talked about the corporation withholding taxes?

A. Yes, I understood what he meant by withholding taxes.

Q. And you knew precisely what he meant when he said that taxes were withheld each month from the children's payroll just the same as any other employee, didn't you?

A. If he said that, I understood him, yes.

(Testimony of Ira Eppler.)

Q. Well, I just read you what he said. Did you understand that? [935] A. Yes.

Q. When you took the stand, you had just followed Mr. Larson, do you recall?

A. I believe that is correct, yes, sir.

Q. Mr. Larson had been talking about his investigation of the tax returns in regard to the butter subsidy checks, is that correct?

A. That was a portion of his testimony, yes, sir.

Q. And that was one of the items he was investigating?

A. I believe he stated that, yes, sir.

Q. And then one of the first matters you were interrogated about when you took the stand was the matter of the same butter checks, was it not?

A. I don't recall that I was asked about the butter subsidy payments.

Q. Do you recall that you testified that you talked with Mr. Forster about the matter and that Mr. Forster said to you that his accountants now said that those butter checks must now be run through the books?

A. Mr. Forster said that to me. I didn't ask Mr. Forster about the butter subsidy payments.

Q. And that was in August 15, 1951, you had that conversation with Mr. Forster?

A. It was at that time that Mr. Forster told me [936] that, yes, sir.

Q. Do you know that those subsidy payments ceased by the United States Government June 1, 1946, over five years before?

(Testimony of Ira Eppler.)

A. I don't know when they ceased.

Q. Are you still certain that Mr. Forster ever made any such statement to you in the year 1951 that those checks must now be run through the books?

A. That is a portion of the statement that he said, yes, sir.

Mr. Griffin: That is all. [937]

* * * * *

Q. You mentioned the accounts receivable card, Mr. Eppler, out at Issaquah. Were there—do you know whether there were accounts receivable cards for people that owed money to Issaquah Creamery or Alpine Dairy other than people to whom they sold goods in the regular course of business? [973]

A. I know that Alpine had such cards. Whether or not Issaquah had, I don't know.

Q. You were questioned at some length with regard to whether there was a place where Mr. Erickson could have put these personal expenses of Mr. Forster and charge them to Mr. Forster on the books of Issaquah Creamery Company and Alpine Dairy. Could that not have been done simply by opening up an accounts receivable card in the name of Mr. Forster?

A. That is one of the ways it could have been done, yes, sir.

Q. And that then would have been exactly the same procedure that Mr. Erickson handled for numerous other people that owed money to Issaquah Creamery Company or to Alpine Dairy?

(Testimony of Ira Eppler.)

A. If he had done that it would have been the same procedure.

Q. Well, there certainly were many accounts receivable cards in these organizations reflecting amounts owed to these businesses by outside people, weren't there? A. Yes, sir.

Q. And all that would have been necessary in order to have charged Mr. Forster with these [974] personal expenses would have been to take a ledger card and put Mr. Forster's name on it and put it in the accounts receivable cards?

A. Well, as I have said, it could have been done that way, yes, sir. [975]

* * * * *

Q. But one of the accounts among the asset accounts in the lower part of this schedule on the right hand side is account 107 for Hans Forster, is it not? A. Yes, sir.

Q. And that is one of the asset accounts which would have to apply to Issaquah Creamery as listed on the left upper side of the chart or otherwise Issaquah Creamery would be left without asset accounts, isn't that true?

A. That is correct, yes, sir.

Q. There has been testimony, Mr. Eppler, about many expenses of Mr. Forster which were charged as business expenses on this book—on these books. I refer you now to the insurance premiums, Exhibit 162. Do you recall how those were charged?

A. My recollection is that they were charged as insurance expense. [983]

(Testimony of Ira Eppler.)

Q. In the summary figures contained on Exhibit A-16, the adding machine tapes, can you tell us whether there is an account for insurance expenses?

A. Yes, sir; it is account 24, I believe.

Q. Now, from examining that item on Exhibit A-16, there would be nothing that would indicate to a person using that, again, that it included other than legitimate business insurance expense of these businesses, isn't that true?

A. There is no way of telling by looking at this tape, no, sir.

Q. And there would be likewise no way of telling from looking at the figures of Mr. Erickson's journal with that account number in front of the figure, for a person looking at that, to tell that this was not legitimate insurance expense of the businesses, would there?

A. Unless you had other information to go with it, no, sir, there wouldn't be.

Q. Also, I refer you to Exhibit 178 for the Lodge Dues. Do you recall how those were charged?

A. I believe some were charged to advertising and others to fees and dues and something like that.

Q. And would there be any way for a person taking these figures, summary figures with account numbers, [984] off of Exhibit A-16 to tell that the advertising or other expense included improperly Lodge Dues that were not business expenses?

A. If that is all the information available there would be no way of telling, no, sir.

(Testimony of Ira Eppler.)

Q. And the same thing is true of Exhibit 198 and 174 and 175, is it not?

A. The same is true of all these other exhibits that you have mentioned.

Q. Now, in general, the same is true of all of these personal expenses, these items said to be personal expenses of Mr. Forster that were charged as business expenses on these books, isn't that so?

A. That is correct, yes, sir.

Q. So that if Mr. Taylor had no other information about these items, then he was justified in taking these summary figures given to him in the manner you have described and entering them in his——

I will reframe the question.

Then if Mr. Taylor had no information indicating that these items had been entered improperly in the books, there would be nothing to show him that he was not justified in taking these figures as given to him and putting them in his ledger as expenses of the corporation or of the [985] business?

Mr. Griffin: Just a moment, if the Court please. I wish to inquire whether he is limiting it to the figures given him in A-16?

Mr. Le Sourd: Well, in A-16 or any of these monthly tapes like A-16.

A. If he had no other information he would be justified in using those in his general ledger, yes, sir.

Q. (By Mr. LeSourd): During your testimony, Mr. Eppler, you had occasion to testify to a num-

(Testimony of Ira Eppler.)

ber of items of receipts which were not entered upon the books of Issaquah Creamery or Alpine Dairy, but which were deposited in Account 198?

A. Yes, sir.

Q. The tax returns which were filed for Issaquah Creamery and for Mr. Forster personally, which included the Alpine Dairy income, showed large amounts of gross income accruing to each of those businesses, isn't that right?

A. That is correct, yes, sir.

Q. And these amounts——

Mr. Le Sourd: Cancel that part of the question.

Q. (By Mr. LeSourd continuing): In your testimony on direct, you examined on the stand certain of these tax returns, and looked at the figures, and stated that the figures therein did not include a particular item of receipts? A. Yes, sir.

Q. Do you recall that?

Actually, the total income shown in those returns would have been large enough in every case to have included the particular item you were talking about, wouldn't it?

A. Which particular item?

Q. Well, let me reframe the question.

The particular items of income which were not entered upon the books that you were testifying concerning would not show up in any event on the final tax return as a separate item of income in normal cases, would it?

A. No, sir; all that would show on the tax return is sales. That would include all sales made.

(Testimony of Ira Eppler.)

Q. And since you have said the sales listed on these tax returns were in large amount, you couldn't tell from examining that particular account whether or not an individual item was included in that amount?

A. No, sir; you would have to examine the other books and journals and so forth to determine that; also [987] the bank account.

Q. So, what you mean when you testified that by looking at these returns that particular items of receipts were not in there was that you had checked the books and found that the receipts were not in the books, and did not enter into the total sales again that appeared in the return; isn't that right?

A. That is correct. Partially so.

Q. Well, that is correct insofar as these business receipts are concerned?

A. Well, we also checked the company bank accounts to see whether these items had been deposited in the company bank accounts, as well as the books and the tax returns.

Q. Yes.

A. In other words, there is no way of looking at the total figure shown on the tax return and knowing what it is without reference to the other books and records of the companies and corporations.

Q. In other words, the reason that these receipts didn't get on the tax returns was that they never got in the books; isn't that right?

(Testimony of Ira Eppler.)

A. I think it is safe to say that that is one of the reasons, yes, sir.

Q. Well, if they had been entered in the books and [988] had appeared in the totals which were entered in the tax returns, then it would have appeared in the tax return and the tax would have been paid, isn't that right?

A. I assume it would have been, yes, sir; it would have had a much better chance, at any rate.

Q. Yes, I see. You have testified, for example, to various checks and currency of—referring you to Plaintiff's Exhibit 235, these are what type of items on this exhibit?

A. These represent payments for butter sales by Issaquah Creamery.

Q. And those payments never got on the books of Issaquah Creamery?

A. No, sir; they did not.

Q. And not getting on the books, they were not included in the totals of sales that were finally entered in the journals of Mr. Erickson?

A. No, sir; they were not.

Q. And in putting in the totals of sales in Mr. Erickson's journals, they were not in the totals on the tax returns?

A. No, sir; they were not.

Q. And you testified to various receipts from Time Oil Company for gasoline rebates; did they ever get on the books of the— [989]

A. (Interposing) As near as I could determine, they did not, no, sir.

(Testimony of Ira Eppler.)

Q. And, not getting on the books, they never got in the totals of Mr. Erickson's journal?

A. That is right.

Q. And is the same thing true of Holly Sugar payments?

A. Those were not listed in the books and therefore, I think not included in the tax return totals.

Q. And the same thing of Amalgamated Sugar?

A. The same thing is true.

Q. And the same is true of the Darigold checks *checks* that were not entered in the books?

A. That is correct, yes, sir.

Q. And referring you now particularly to Exhibit 209,—exhibit 209 is a check of Renton Ice and Ice Cream Company, signed by Mr. Schneider and Mr. Taylor? A. Yes, sir.

Q. Do you recall what that check was issued for?

A. I believe it was issued in payment for a Hanson Freezer.

Q. And, as far as you know, it was a perfectly legitimate [990] transaction?

A. Well, it was legitimate so far as Renton Ice and Ice Cream was concerned, yes, sir.

Q. That is what I mean. They were paying for equipment that they had purchased from Issaquah Creamery Company?

A. That is what I have been told, yes, sir.

Q. So that there was nothing improper about Mr. Schneider and Mr. Taylor issuing a check to pay for this amount? A. No, sir.

(Testimony of Ira Eppler.)

Q. But it never did get on the books out at Issaquah, did it? A. I don't believe it did.

Q. And not getting on the books out at Issaquah, it never got into the total figures on Mr. Erickson's journal? A. No, sir.

Q. And there was nothing in the nature of the total figures of Mr. Erickson's journal, or in the monthly tapes that were given, which would indicate to Mr. Taylor that that check had not gotten into the receipts of Issaquah Creamery?

A. Standing alone, the tapes wouldn't show, one way or another, no, sir. [991]

Q. Mr. Eppler, is the same thing true of the checks in Plaintiff's Exhibit 200 which are various other Renton checks to Issaquah Creamery; so far as Issaquah Creamery is concerned, they never got on the books?

A. That is correct, and these appear to have been a bona fide payment for merchandise by Renton Ice and Ice Cream Company.

The Court: Those are all drawn in favor of Issaquah?

The Witness: I believe they are, yes, sir, in Exhibit 200.

Q. (By Mr. LeSourd continuing): They are perfectly bona fide payments so far as Renton Ice went; when they got out to Issaquah they never got on the books?

A. They didn't get on the books which I saw.

Q. Yes; I mean, to the best of your knowledge, is what I am asking, Mr. Eppler.

(Testimony of Ira Eppler.)

A. Well, I have reason to believe that there must have been some other books on which they were listed, but I didn't see those books.

Q. But none of the books that we are working with here contained them? A. No, sir. [992]

Q. And they didn't get into the monthly totals on Mr. Erickson's journal? A. No, sir.

Q. Is the——

Mr. Le Sourd: Cut that.

Q. (By Mr. Le Sourd continuing): There was testimony here by Miss Neukirchen with regard to sales of ice cream which likewise were not entered in the books. If those ice cream sales had been entered in the Issaquah books, where would they have been entered?

A. I believe they would have been entered under Sales.

Q. And would they then have gone into the daily summary sheets in Plaintiff's Exhibit 244?

A. Yes, sir.

Q. As sales? And then, as—then they would have been part of the total sales figure that went from her to Mr. Erickson's journal?

A. Yes, sir.

Q. And there was nothing in that total figure that went into that journal, or went into the monthly adding machine tapes to Mr. Taylor, that would indicate that those ice cream sales were not being recorded on the books, was there?

A. So far as I know, no, sir. [993]

I should say that I haven't seen many of these

(Testimony of Ira Eppler.)

adding machine tapes, and haven't made any efforts to see what is actually listed on them. As I understand this system, what you say is correct.

Q. As far as you know, that is correct?

A. Yes, sir.

Q. Is the same thing true of the Daisy Ice Cream sales, where the testimony shows that the charge sales were put in the Issaquah books but the cash sales were never entered?

If——

A. I am sorry, it is the same thing.

Q. Let me expand it.

If those Daisy cash sales had been entered in these books, they would likewise have gone into the daily summary sheets, Plaintiff's Exhibit 244, would they not?

A. If they were listed in there, yes, sir.

Q. And likewise, they would have gone into the sales totals in Mr. Erickson's journals?

A. I would think so, yes, sir.

Q. And there is nothing in the totals in Mr. Erickson's journal that would indicate that the Daisy Ice Cream sales had been omitted, is there?

A. From an examination of the sales journal standing alone, no, sir. [994]

Q. With further respect to Daisy Ice Cream, Mr. Forster bought that in 1944, did he not?

A. That is my understanding, yes, sir.

Q. Did you learn that Mr. Taylor had been doing accounting for the previous owner of that business? A. I was told that, yes, sir.

(Testimony of Ira Eppler.)

Q. And did you not also find that from the time Mr. Forster bought that business, Mr. Taylor no longer received any fee for accounting for that business?

A. I have no knowledge of any such receipts, no, sir.

Q. In your investigation, you found no such receipts? A. No, sir.

Q. Also, in your investigation of Daisy, you found no work papers or ledgers or balance sheets, or other work by Mr. Taylor on Daisy Ice Cream Company until it was put into Arctic Gardens in the middle of 1949, isn't that correct?

A. Well, I never found any papers for Daisy Ice Cream or Alpine Ice Cream Company, Unincorporated, by Mr. Taylor, no, sir.

Q. So that there was no indication that Mr. Taylor had done any work on that business at all after Mr. Foster took it over until it was put into Arctic [995] Gardens in 1949?

A. Not to my knowledge, no, sir.

Q. Did you not also find that the Daisy Ice Cream information on their sales and receipts was sent directly by Mr. Rygg at Daisy out to Issaquah?

A. That is the testimony Mr. Rygg gave, yes, sir.

Q. Handing you Plaintiff's Exhibit 150, these are checks of Finstad and Utgard to Issaquah Creamery Company, are they not?

A. Yes, sir.

Q. You recall the purpose of those checks?

(Testimony of Ira Eppler.)

A. My recollection is that they were for gasoline or tires or calendars, or some minor type of supplies, something not ordinarily used in the business.

Q. Did you find anything to indicate that they were not proper and valid expenses of Finstad and Utgard?
A. No, sir.

Q. So that the payment and the issuance of these checks by Finstad and Utgard was, so far as you know, entirely proper?
A. Yes, sir.

Q. But when they reached Issaquah, they were not entered in the books; is that not right? [996]

A. That is correct, yes, sir.

Q. And if they had been entered in the books, they would have been entered as receipts of some kind or another?

A. I assume that they would have, yes, sir.

Q. And as such, would have entered into the totals that appeared in Mr. Erickson's journal?

A. I believe so, yes, sir.

Q. And from examining those totals, there would be nothing to indicate that these checks had not been properly recorded in the books?

A. Standing alone, no, sir, you wouldn't be able to tell by looking at the total figures.

Q. Yes, unless you had some further information?
A. That is correct.

Q. The various Casein sales that have been testified to here, isn't the same thing true there, that they were not entered in the books, and thus did not get into these total sales figures?

(Testimony of Ira Eppler.)

A. That is correct, yes, sir.

Q. With regard to the deduction of business expenses as—with regard to the deduction as business expense of personal items of Mr. Forster, Mr. Erickson said, I believe you testified, that this was a practice they had developed? [997]

A. That is something like what he said, yes, sir.

Q. Did not Mr. Erickson also say that he could not recall ever discussing any of these with Mr. Taylor?

A. I believe he said that, yes, sir.

Q. And, did he not also say that he had not asked Mr. Taylor's advice as to any of these?

A. I believe he said that, yes, sir.

Q. In fact, Mr. Eppler, didn't Mr. Erickson say to you that at no time did he ask advice from Mr. Taylor on accounting matters?

A. I may have. I don't recall his being that specific.

Q. You have his statement there?

A. Yes, sir.

Q. I refer you to Question 231.

A. For which date, sir?

Q. I am sorry. Well, I do not have the particular date, Mr. Eppler, because I do not have a complete copy of his statement, but, Question 231, I believe—I will ask you whether or not Mr. Erickson—you did not—or Mr. Marx did not—ask Mr. Erickson this question:

“And yet at no time did you ask advice from Mr.

(Testimony of Ira Eppler.)

[998] Taylor on accounting matters, is that correct?"

And that he answered:

"Yes, it is probably correct."

A. Yes, I asked such a question, and Mr. Erickson made such an answer.

Q. Now, with respect to the changes that were made in the work sheet of Mr. Taylor for Issaquah Creamery Company at the end of 1949, the testimony here, I believe, has shown, has it not, that there were certain changes made in the journals kept by Mr. Erickson for the months of November and December, 1949, of Issaquah Creamery Company? A. Yes, sir.

Q. And then there has been some testimony as to what happened when Mr. Taylor came out to Issaquah in January of 1950 to work on the 1949 statement of Issaquah Creamery Company?

A. Either the end of January or near the first of February. Approximately that time, yes, sir.

Q. I was simply asking the question, there has been some reference to it? A. Yes, sir.

Q. With respect to the date, didn't all parties agree in talking to you that it was either the very last of January, or first of February? [999]

A. They were in agreement on that point, yes, sir.

Q. And both Mr. Forster and Mr. Taylor's statements indicated that at that time Mr. Forster objected that the income was too high?

A. Yes, sir.

(Testimony of Ira Eppler.)

Q. And you received contradictory statements, I believe, from Mr. Erickson and from Mr. Taylor as to what happened after that time?

A. Yes, sir.

Q. Now, Mr. Erickson said, did he not, that after this time, acting on instructions, I think he said, he set out to increase the accounts payable and to make other alterations to reduce the income by about eighty thousand dollars?

Mr. Griffin: Just a moment. Instructions from whom, please?

Q. (By Mr. LeSourd continuing): I think Mr. Erickson stated he received instructions from Mr. Taylor to that effect, did he not?

A. It is my recollection he did, yes, sir.

Q. And his version is that under those instructions, he set out to make those changes to increase accounts payable and these other alterations to reduce [1000] income by about eighty thousand dollars?

A. Yes, sir.

Q. Now, also, Mr. Erickson said that he did this by increasing milk drafts ten thousand dollars; increasing accounts payable to Consolidated Dairy by fifty-one thousand dollars, and accounts payable to R. L. Stephenson by eighteen thousand dollars; isn't that right?

A. Those are the items he mentioned, yes, sir.

Q. Those items total seventy-nine thousand dollars, roughly?

A. My recollection is that it is slightly more than eighty thousand.

(Testimony of Ira Eppler.)

Q. Slightly more than eighty thousand; and Mr. Erickson said that he did this in February, 1950, didn't he?

A. He indicated that it was in February, or at least sometime after Mr. Taylor had been out to the Issaquah office, either the last week in January or the first week in February, 1950.

Q. Yes; you did find on examining the books that the R. L. Stephenson account payable had been improperly increased by the eighteen thousand dollars, didn't you? A. Yes, sir. [1001]

Q. Referring you to Plaintiff's Exhibit No. 214, will you tell us what that is?

A. 214 is a check dated January 10, 1950, paid to R. L. Stephenson in the amount \$18,859.50.

Q. Now, that check dated January 10th of eighteen thousand odd dollars to Mr. Stephenson, cleared out of the Issaquah books the improper eighteen thousand dollar charge that had been entered in there, did it not?

A. I believe it did, yes, sir.

Q. And does that check bear any indication as to when it was deposited in the bank?

A. Yes, sir.

Q. And when was that check deposited in the bank?

A. I would say it was either deposited on the 15th or 16th of January, 1950.

It could have been—it was either the 16th or prior to that time. It was cancelled by the bank on that date.

(Testimony of Ira Eppler.)

Q. In other words, the check is dated January 10, 1950, and it cleared through the bank by January 16th, 1950? A. Yes, sir.

Q. So that this eighteen thousand dollar R. L. Stephenson improper entry, Mr. Erickson said to [1002] you that he made in February, 1950, or after Mr. Taylor came out at the end of January, as one of these items that he corrected on Mr. Taylor's instructions, that was not only entered in the Issaquah books prior to the middle of January, 1950, but was cleared out of the books by the deposit of this check prior to the middle of January, 1950, wasn't it?

A. Well, it cleared through the bank either on or before January 16th.

Q. Well, say January 16, 1950; isn't that right?

A. Yes, sir.

Q. So that Mr. Erickson's statement about this matter contradicts this documentary evidence that is in evidence in this case?

Mr. Griffin: Objected to as argumentative, if the Court please.

The Court: Objection sustained.

Mr. Le Sourd: Very well.

Q. (By Mr. LeSourd continuing): I hand you, Mr. Eppler, Plaintiff's Exhibit 259 which is Mr. Taylor's work sheet for the Issaquah Creamery Company for the end of January, 1949.

This is the work sheet that contains—— [1003]

Mr. Cox (Interposing): December.

Q. (By Mr. LeSourd continuing): At the end

(Testimony of Ira Eppler.)

of the year, 1949, and this is the work sheet that contains the changes we are talking about just previously?

A. It contains some of them, yes, sir.

Q. It contains the Consolidated Dairy change and the milk draft change, does it not?

A. Yes, sir.

Q. And does not show any R. L. Stephenson change, does it? A. No, sir.

Q. Now, the changes in the Consolidated Dairy and the milk draft accounts on that work sheet are not concealed in any way, are they? They are written right out in a separate column as changes, aren't they?

A. They are written in a separate column, yes, sir.

Q. So that anyone looking at this immediately flags the particular items which entered into the changes made on this work sheet?

A. Well, the figures are written in. You can't tell what they are from looking at the work sheet, however.

Q. No, but the figures are there for anybody to [1004] see and to make inquiry about; there is no attempt on that work sheet to conceal those figures, is there?

A. They are written on the work sheet, yes, sir.

Q. As separate figures?

A. In a separate column, yes, sir.

Q. Yes; now, there was testimony here, there were questions asked — excuse me — about the

(Testimony of Ira Eppler.)

changes which Mr. Taylor made in his ledger for the year 1949 to reflect these changes on the work sheet.

Now, those changes made by Mr. Taylor on his ledger are so that it reflected accurately the journals that Mr. Erickson had kept at Issaquah, isn't that right? A. Yes, sir.

Q. And also reflected accurately the changes that were made on his annual work sheet for the entry of these figures in these separate columns?

A. Well, the same changes were made, yes, sir.

Q. And the income tax return, Mr. Eppler, of Issaquah Creamery Company for the year 1949, can you by examining Plaintiff's Exhibit 14, tell me when that was filed with the Collector of Internal Revenue? A. March 14, 1950.

* * * * * [1005]

Q. (By Mr. Keesling): You recall, do you not, Mr. Eppler, that you testified that Mr. Hans Forster informed you that his employees at various times brought numerous items to him and said that they had no place to record them? [1039]

A. Yes, I recall that.

Q. Do you recall whether he mentioned specifically that Mr. Erickson was one of those that brought items to him?

A. Yes, he specifically mentioned Mr. Erickson as one of the employees who brought items to him.

* * * * * [1040]

Q. Referring to the Hopper-Kelly check, Exhibit 152. The Hopper-Kelly check has reference to

(Testimony of Ira Eppler.)

the Television set. I believe I have marked the place there to help you find it easily.

The Court: What is the number?

Mr. Keesling: I believe it is 152.

The Witness: Yes, it is 152.

A. The check itself is dated May 18, 1949. The dollar amount is \$678.66. The check number is B-1934. Under date of May 10, in the check register, the payee, [1073] check number and dollar amount are all identical to the check. It is charged to plant expense, account 9.

Q. The payee in the check register and on the check are identical? A. Yes.

Q. I show you Exhibit 160. This is a Ryan Cadillac check, I believe we have marked that one in the appropriate check register.

A. The check in question is No. B-1743. It is dated August 28, 1947. The amount is \$3,650. It is listed in the check register under August 14th. The payee, the check number, and the dollar amounts correspond. It is charged to account 20, which I believe is truck expense.

Q. The payee on the check and in the check register is identical? A. Yes, sir.

Q. I show you Exhibit 192 and 193. They comprise——

Mr. Moriarty: 190?

Mr. Keesling: 192 and 193.

Q. (By Mr. Keesling continuing): They comprise the Thurston Laundry checks. Would you pick out one of those two checks—one check—and

(Testimony of Ira Eppler.)

find it in the appropriate [1074] check register?

In that group could be included 194. It happens to be another Thurston Laundry check.

A. All right. Do you just want one check?

Q. Yes.

A. There are several here. I will pick the one in Exhibit 193, the first one, which I believe is dated May 10, 1946. It is check No. 7368. The dollar amount is \$69.76.

Q. And the payee on the check?

A. These are all Thurston Laundry.

Q. And the payee shown on the check register?

A. I haven't found it in the check register yet.

Q. Oh, excuse me. To save time, my questions refer merely to the name of the payee on the check and the name as shown on the check register. It may save time to just limit it to that.

A. All right, I have examined all these checks and the payee, both on the checks and in the check register, do correspond. They may be abbreviated slightly in the cash register—check register, because of limited space, but you can tell they are the same checks.

Q. I show you Exhibit 228 and 183, a group of checks, one—they all concern jewelry purchases. One refers to Ben Bridge, and the other to Jensen and [1075] Nielsen. 228 is Jensen and Nielsen, and 183 is Ben Bridge. Are the names on those checks shown exactly in the same manner on the check register as you have examined them?

A. They may not be shown in exactly the same

(Testimony of Ira Eppler.)

manner, but they are similar enough that you can tell they are the same checks.

I would say, without examining them, that they are identical.

Q. Referring to Exhibit 175, made out to Nile Temple, have you checked that in the check register and, if you have, can you state whether or not the payee, as shown in the check register, is exactly as shown on the check?

A. I believe it is, yes, sir.

Q. I show you Exhibit 180. This represents a group of checks made out to Klopfenstein's, by Alpine Dairy, signed Hans Forster.

The Court: Do you propose to ask the same questions on all these?

Mr. Keesling: There are just two or three more, and I want to ask him to look up two or three of that group of checks of Klopfenstein checks.

Q. (By Mr. Keesling continuing): You have traced those into the [1076] check register, have you not? A. Yes, I have.

Q. And does the name Klopfenstein show on the check register of Harold's books? A. Yes.

Q. Exactly as shown on the check?

A. I believe so.

Q. Referring to Plaintiff's Exhibit 176, a check made out to Providence Hospital. You have examined that and traced it into the appropriate check register? A. Yes, sir.

Q. And does the name on the check register

(Testimony of Ira Eppler.)

show exactly as it does on the check, Providence Hospital? A. I believe it does.

Q. I show you Exhibit 231, a check made out to Dana R. Hillary. You have traced that into the appropriate check register, have you not?

A. Yes.

Q. And does it show on the check register the name of the payee exactly as shown on the check?

A. I believe it does, yes, sir.

Q. Would it be a true and correct statement to say that of all the checks written by Harold for Issaquah [1077] Creamery that he recorded in the check register, the name of the payee exactly as it was shown on the check?

Do you know of any instance where that would not be correct?

A. Of the ones that I have examined, you can tell from looking at the check register that the checks in question are the same.

Q. Now, concerning your statement that the entries in these check register—any of them could be a business expense—would you explain that to the jury, just what you mean by that?

For instance, the Klopfenstein check,—well, you could start with the insurance check. How could the insurance check be a business expense?

A. Oh, large firms have all kinds of insurance expenses. From looking at the check registers and the name of the payee, there is no way of telling it is not a business expense. You have to have other information to know that.

(Testimony of Ira Eppler.)

On Klopfenstein's—

Q. (Interposing): I will ask you as we go along.

A. Oh, excuse me.

Q. Now, I would like you to say more. Now, in respect—

The Court (Interposing): I wonder if [1078] instead of taking time, we can't cover all those, Mr. Keesling, in a narrative answer?

Mr. Keesling: Well, there are certain ones I want to ask particularly about.

Q. (By Mr. Keesling continuing): —in respect to the check for Ed's Kennels?

A. Any large company might make payments to a Kennel where it would be some type of a business expense. A common example would be if they had sold something to the Kennels and there was some price adjustment. They might make a payment on that basis, or any number of hundreds of other circumstances, where it would be a proper pay-out by the company and a proper business deduction to the company, especially a large company.

Q. Now, with respect to grouping them together, the checks to the stock brokers, Merrill, Lynch, and Jordan, one was butter futures, and the other was stock, is there a statement in respect to that?

A. If it is a corporation, the corporation itself might be buying and selling stock as a part of its operation. If it were an individual, I think that that would raise some question immediately. However, it could quite easily be a proper expenditure, even in [1079] an individual's business operations, if it

(Testimony of Ira Eppler.)

is a large business. As an example of that, even in a large business individually owned, the business itself might be buying and selling stocks and bonds as a part of the business operation, in which case it would quite properly be a business deduction for the firm.

Q. Now, in light of your statement, how about the Hopper-Kelly check for the television?

A. The same is true of all these checks, I believe.

Q. Is the same true of Ryan-Cadillac?

A. It could be.

Q. And how about Thurston Laundry?

A. The same is true of Thurston Laundry.

Q. Now, how about the jewelry account checks?

A. If you knew that these were jewelry companies and you were examining the books, your curiosity might be aroused, but if you don't happen to know that Jensen and Nielsen is in the business of selling jewelry, or Ben Bridge is in the business of selling jewelry, from looking at the check register, there would be no way of knowing that; but, even if you knew that they were jewelers, a large business might have that expense as a proper business deduction. It would depend on what the circumstances were. [1080]

Q. How would you explain the check, Exhibit 231, to Dr. Hillary?

A. There might be any number of explanations. A very common explanation would be that an employee might have been injured while he was on

(Testimony of Ira Eppler.)

duty, and the employer send him to a doctor and pay his doctor bills at a later time.

Q. Would the same explanation hold true relative to the Providence Hospital check?

A. Yes, it would.

Q. The checks which contain the payee's name as Nile Temple, how would that be explained, or Myrtle Lodge?

A. It could be explained a number of ways. A common explanation might be that the members of the business firm, or some of its employees, might be members of those groups and they might have made a contribution to it, or any number of other things.

Q. What would your explanation be in light of your statement relative to this check for travel expense of Mr. Fox of the Travel Agency?

A. All the check says is Douglas Fox, and doesn't say "travel", but even if it said "Travel Agency", it frequently happens that large firms send employes to conventions, or business trips. When they do, it could be a travel expense. This could easily be [1081] an example of that.

Q. Referring to Exhibit 182, the check to the Washington Athletic Club, what, if anything, would be your explanation of that being a business expense?

A. It could have easily been some sort of promotional matter, or the company might have rented space and they would make some kind of a dairy display or have a conference or something of that

(Testimony of Ira Eppler.)

sort. There are any number of possibilities where it could properly be a business deduction, and a business expense.

Q. With respect to the Washington Athletic Club, do you recall questioning Harold about that particular check? A. Yes, I do.

Q. Do you recall what, if anything, was said?

A. Yes, I do.

Q. Would you tell the Jury generally what you and Harold talked about when you talked about that Washington Athletic Club check?

A. I believe I talked to him about it twice. The first time, he simply said it was a personal expense of Mr. Forster. The second time——

Q. (Interposing): Can you recall the date?

A. It was either March 7th or March 8th, 1951. [1082] The second time I talked to him, I asked him more or less the same question again. He said that it was for the wedding reception expense of one of the daughters of Mr. Forster. I asked him if he thought it was a proper business deduction. I think also that I asked him why he had charged it to Advertising, and he said he charged all payments of Washington Athletic Club to Advertising, and I asked him if he thought it were a proper business deduction for the business, and he said "yes", that he did, that he was present.

Q. Do you recall anything else he said in October of 1950, October 24th?

A. I don't presently recall anything about it,

(Testimony of Ira Eppler.)

but he might easily have made some comments about it.

Q. Do you recall asking this question, Number 208, and this date, I believe, is October 24, 1950, and not 1951, as to the conversation:

"I note here in February, 1949, there was a check for \$1,695 to the Washington Athletic Club charged to Advertising. What was your reason for charging that to Advertising?"

"All the Washington Athletic Club was to be [1083] charged to Advertising."

Did he answer that?

A. Yes.

Q. And the next question:

"How did you determine that was to be charged to Advertising, rather than to Plant Expense or some other account?"

"I supposed it was Advertising, or whatever you might call it, at the Athletic Club."

"Did you know that his daughter was being married at the time?"

"Yes."

"You knew that this was to pay expenses in connection with the wedding, didn't you?"

"Yes."

"Did you feel that that was a proper Advertising Expense for the corporation?"

"It could have been."

"Did you feel that it was?"

"Yes, I did, and I was there."

(Testimony of Ira Eppler.)

“You feel that it was purely Advertising for the corporation?”

“Yes.”

And did he not further inform you on further [1084] questioning that he was there, and that all the customers of the Creamery were there?

A. I don't recall his mentioning any customers of the Creamery. * * * * * [1085]

Q. (By Mr. Keesling): With respect to the Washington Athletic Club entries for each and every month, will you check those you have found in the exhibits, the first one, and state to the Jury whether or not that is charged to Advertising?

A. It is charged to Account No. 23. If I may have the chart of accounts, I can tell you what that is.

Q. Will you compare it with the next entry you found to see if that is also account No. 23, please? I hand you Exhibit 258.

A. Yes, the second one is also charged to Account No. 23 which appears on this schedule of accounts as Advertising.

Q. And the books bear out the statement of Mr. Erickson to you that all Washington Athletic Club items were to be charged to Advertising?

A. These two entries do, yes, sir. [1091]

Q. In view of the stipulation, assuming there is an entry for each and every month for each and every year of the Indictment period, and with that assumption or stipulation, it bears out the statement that all Washington Athletic Club——

(Testimony of Ira Eppler.)

Mr. Moriarty (Interposing): Objected to as not proper cross-examination.

Mr. Kessling: I have in mind what he is referring to.

Q. (By Mr. Keesling continuing): The stipulation relative to whether there is an entry or not should, if the Government is willing, also contain the added provision that on each and every entry, if there are such entries, that it is charged to Advertising in every case throughout the five years for the entire sixty checks, or sixty months, that were paid to the Washington Athletic Club.

A. Well, I believe I could answer your question by saying if they are listed in these books and charged to Account 23, that that is the Advertising account. I don't know what other listings there are down to the one which Mr. Griffin called to my attention yesterday and the one for covering the wedding reception. Those are the only ones I have seen in these books. That is [1092] a total of four entries. * * * * * [1093]

Mr. Griffin: It may be that I can offer a stipulation now, if the Government wants to take my statement for this.

While this examination was going on, I have examined Exhibits 248, 213, 264, 249 and 263 and there is an entry in each and every month of a payment to the Washington Athletic Club except for the months of October and December, 1945. I personally checked them.

(Testimony of Ira Eppler.)

Mr. Moriarty: The Government will accept Mr. Griffin's statement.

Mr. Le Sourd: We accept it.

The Court: Well, the record will show that [1121] counsel have stipulated as Mr. Griffin has set forth.

Does the Jury understand that?

Mr. Griffin: There is one other thing that I might state to your Honor, in going through these, if the thing becomes important later, sometime Alpine is the first group, and in others Issaquah. There is no continuity about it. * * * * * [1122]

Q. But you do know that that \$1200, no matter what Mr. Taylor did to the work sheet, was not reflected in the income tax returns for that year, prepared by Mr. Taylor for Mr. Forster, don't you?

A. Yes, I believe I have already testified along those lines.

Q. You didn't testify along those lines in answering Mr. LeSourd, did you?

A. He didn't ask me such a question.

Q. But in all his examination, what you were [1131] dealing with was that \$1200 paid by Simonson and Forster to Mr. Forster; that is what you were dealing with, wasn't it, which was not disclosed in Mr. Forster's income tax return?

A. That is correct. * * * * * [1132]

WILLIAM H. MARX

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: I want your full name and the spelling of your name, please.

The Witness: William H. Marx.

The Clerk: M-a-r-x (spelling)?

The Witness: That is right.

Q. (By Mr. Patten): Will you restate your full name, Mr. Marx? A. William H. Marx.

Q. And what is your occupation, sir?

A. Certified Public Accountant.

Q. Would you speak up a little louder, please, sir. In what state are you certified?

A. Washington.

Q. When were you certified? A. 1949.

Q. Where is your office, Mr. Marx?

A. Smith Tower.

Q. How long have you been in public accounting? [1207]

A. Since December of 1951.

Q. What was your occupation prior to becoming a certified public accountant?

A. Internal Revenue Agent.

Q. How long were you an Internal Revenue Agent?

A. From January, 1946, to December, 1951.

Q. And what was your occupation prior to becoming an Internal Revenue Agent?

(Testimony of William H. Marx.)

A. I was in the Army for eight months and prior to that, I was with the American Potash and Chemical Corporation in California for five years.

Q. What did you do in California?

A. Accounting work.

Q. Where were you educated, sir?

A. Seattle University.

Q. When did you graduate, sir?

A. June, 1939.

Q. And what was your major academic—what degree did you receive there?

A. Bachelor of Arts in Business Administration.

Q. And what was your major, sir?

A. Economics.

Q. Do you know Mr. Hans Forster, one of the Defendants in these proceedings? [1208]

A. Yes.

Q. Do you know Mr. L. Hicks Taylor?

A. Yes.

Q. And do you know Mr. Harold Erickson?

A. Yes.

Q. When did you meet each of these defendants, starting with Mr. Forster, please?

A. I met Mr. Forster personally first on April 26, 1950. However, I contacted him by phone a few days previous to that time.

Q. And when did you meet Mr. Taylor?

A. Sometime I believe—first, I believe—some-time in 1948.

(Testimony of William H. Marx.)

Q. Your first meeting with Mr. Taylor concerned a matter not directly here involved?

A. That is correct, yes.

Q. And when did you meet Mr. Erickson?

A. In October, I believe, of 1949. Pardon me just a second here.

(Whereupon, the witness referred to some papers.)

A. (Continuing) No, that was in October of 1950.

Q. October, 1950? A. Yes.

Q. In what connection did you meet Mr. Forster?

A. In connection with an examination of his income tax returns.

Q. Did you contact Mr. Forster in carrying out this assignment? A. Yes.

Q. What was the date of your first contact with Mr. Forster? A. April 21, 1950.

Q. Would you tell us—describe that contact.

A. I telephoned Mr. Forster and identified myself as an Internal Revenue Agent and stated that I had received an assignment to check—to examine his income tax returns; and Mr. Forster stated that—or he asked me what returns that I was interested in and I stated that my assignment was to examine all returns that had been filed by him for any period of time and it was also to cover any returns filed by any business enterprise in which he had a financial interest.

Q. What, if anything, did Mr. Forster say?

A. He indicated that, as of that moment, he was

(Testimony of William H. Marx.)

somewhat at a loss to know just how to proceed with respect to accounting representation, and that he would call me back as soon as he had come to some decision on that matter.

Mr. Keesling: If the Court please, we are unable [1210] to hear the witness.

Q. (By Mr. Patten): Will you speak up?

A. I will try to do that, yes, sir.

Q. Did Mr. Forster call you in accordance with that agreement? A. No.

Q. Did someone else call you? A. No.

Q. Who was that?

A. Mr. George Kachlein of the law firm of Bogle, Bogle and Gates.

Q. And what was the date on which Mr. Kachlein called you? A. April 24, 1950.

Q. And what, if anything, did Mr. Kachlein say?

A. He stated that he had been retained by Mr. Forster to represent him in this matter and suggested that we meet with Mr. Forster in Mr. Kachlein's office on April 26th at 10:00 o'clock in the morning.

Q. Did you attend a meeting in Mr Kachlein's office? A. Yes, on that date. [1211]

Q. On April 26, 1950?

A. That is correct.

Q. And who was present at that meeting?

A. At the time I arrived at 10:00 o'clock until 10:30, Mr. Kachlein, Mr. Tremper, of the accounting firm of Touche, Niven, Bailey and Smart, and

(Testimony of William H. Marx.)

Mr. Alkire of the same firm, were present and at 10:30 Mr. Forster came in and all the parties I have mentioned were present until the conclusion of the interview.

Q. Will you relate to the Court and the Jury briefly what transpired at this conference?

A. With respect to the period from 10:00 to 10:30, at which time Mr. Forster was not yet in attendance, Mr. Kachlein indicated that he had——

Mr. Griffin: If the Court please, he has twice used the term “indicated.” I think we are entitled to the conversation.

Q. (By Mr. Patten): Would you use the word “state”?

A. Mr. Kachlein stated that upon his advice Mr. Forster had retained the accounting firm of Touche, Niven, Bailey and Smart to assist in this matter and that they were in attendance for that reason and that a power of attorney would be filed [1212] covering their representation as well as Mr. Kachlein's.

Mr. Kachlein further stated that he had done legal work in the past for Mr. Forster and that for that reason he was somewhat conversant with his affairs.

I stated that I had no knowledge of the extent of his enterprises and Mr. Kachlein spent some time in stating the names of the different companies which have been discussed here.

Mr. Kachlein also made the observation that if accounting errors had been made, or if errors had

(Testimony of William H. Marx.)

been made, it was undoubtedly due to the sloppy accounting work of Mr. Hicks Taylor.

* * * * * [1213]

Q. Do you have some notes that might refresh your memory? A. Yes.

Q. All right.

A. Yes; there is one point that I recall now. I [1215] asked Mr. Forster as to how the information that appeared on his personal tax returns—what the source of it was, whether it was all from books of account or from information from sources other than regular books of account and he indicated that——

Q. (Interposing) Stated.

A. (Continuing) ——stated that on his personal return there were books maintained for the Alpine Dairy. In other words, the information relating to that would come from the books of account but that there were other items of income such as dividends and interest and that information did not come from any books of account.

So, I asked him how his accountant, Mr. Taylor, got that information, received that information, in connection with the preparation of his tax returns and Mr. Forster stated that he personally gave him that information. And then I stated that if not all items of income got in his tax return, and these items were other than the Alpine Dairy income where the books were maintained, that Mr. Taylor could not—I asked him whether he considered that Mr. Taylor could be responsible for those omis-

(Testimony of William H. Marx.)

sions if he himself was the only source of information to Mr. Taylor for those returns and Mr. Forster stated [1216] no, he did not consider Mr. Taylor would be responsible if he was the source of that that information if errors had been made in that direction.

* * * * * [1217]

The Court: It may be admitted.

(Plaintiff's Exhibit 270 admitted in evidence.) [1222]

Q. (By Mr. Patten): Mr. Marx, will you explain very briefly what that is, please, sir?

The Court: Before we go ahead, just to complete the introduction of this matter in line with the Government's offer, this document, Ladies and Gentlemen, relates solely to the Defendant Forster.

That is the offer?

Mr. Patten: Yes, sir.

A. This Exhibit 270 is a list of all of the checks drawn on a personal checking account and a distribution as to the type of expenditure.

The headings in the Summary states household, clothing, utilities, music lessons, children, and so forth, medical, checks drawn to cash, life insurance premiums paid, furniture and miscellaneous.

Q. (By Mr. Patten): And the check shown on there were drawn on what account, sir?

A. On the personal checking account of Hans and Evelyn Forster at the Washington State Bank, Issaquah, Washington.

Q. These are just ordinary living expenses?

(Testimony of William H. Marx.)

A. Yes.

Q. They were not charged in the books to any business expense or anything? [1223]

A. No, sir.

* * * * *

Q. (By Mr. Patten): Mr. Marx, you are being handed the document marked for identification as Plaintiff's Exhibit 274. Can you identify that, please? A. Yes.

Q. You can identify it as what?

A. It is a check register of the Arctic Gardens, Incorporated, for the period July, 1945, until May, 1949.

Q. Do you recognize the handwriting in that document? A. Yes. [1224]

Q. Do you recognize it to be whose handwriting? A. Mr. L. Hicks Taylor.

Q. I hand you another group of documents marked for identification as Plaintiff's Exhibit 275 and ask you if you can identify those documents?

A. Yes.

Q. You can identify them as being what?

A. General ledger sheets of the Arctic Gardens, Incorporated, for the period 1945 to 1949.

Q. You have examined—previously examined both of these documents? A. Yes.

Mr. Patten: I don't propose to offer these, because I don't think they would serve any useful purpose.

Q. (By Mr. Patten): Do these records of exhibits 274 and 275 show that Arctic Gardens was

(Testimony of William H. Marx.)

indebted to Mr. Forster at the close of the years 1945 to 1948?

Mr. Griffin: I am compelled to object to the question without the documents in evidence as to what they show.

Mr. Patten: If you prefer. I just didn't want to clutter up the record.

Mr. Griffin: Well, I have to make my objection.

Mr. Keesling: We have no objection.

Mr. Le Sourd: No objection.

Mr. Griffin: No objection.

Mr. Patten: I offer 275 and 274.

The Court: They may be admitted.

(Plaintiff's Exhibits Nos. 274 and 275 admitted in evidence.)

Q. (By Mr. Patten): Do these records show an indebtedness to Mr. Forster? A. Yes.

Q. What is the period of that indebtedness, sir?

A. December 31, 1945, to December 31, 1948, inclusive.

Q. Will you give us the amount of that indebtedness at the close of each of the years 1945 to 1948?

A. As of December 31, 1945, \$35,000; as of December 31, 1946, \$20,000; as of December 31, 1947, \$20,000; as of December 31, 1948, \$20,000.

Mr. Patten: I ask that this group of documents be marked for identification as Plaintiff's Exhibit next in order.

The Clerk: Plaintiff's Exhibit No. 276 marked for identification. [1226]

(Testimony of William H. Marx.)

(Plaintiff's Exhibit 276 marked for identification.)

Q. (By Mr. Patten): Mr. Marx, you are being handed a group of documents being marked for identification as Plaintiff's Exhibit 276.

I ask you if you recognize those documents?

A. Yes.

Q. What do you recognize them to be, sir?

A. General ledger sheets of the Alpine Ice Cream Company for the year 1949.

Q. Do you recognize the handwriting on those ledger sheets? A. Yes.

Q. Do you recognize it to be whose handwriting?

A. Mr. L. Hicks Taylor.

Mr. Patten: I would like to offer Exhibit 276 in evidence.

Mr. Griffin: No objection.

Mr. Le Sourd: No objection.

Mr. Keesling: No objection.

The Court: Exhibit 276 may be admitted.

(Plaintiff's Exhibit No. 276 admitted in evidence.) [1227]

Q. (By Mr. Patten): Mr. Marx, does Exhibit 276 show any indebtedness of Alpine Ice Cream Company to Mr. Forster? A. Yes.

Q. What is the amount of that indebtedness as of December 31, 1949?

A. With respect to direct loans made by Mr. Forster, the balance would be seventy thousand dollars, as of December 31, 1949.

Q. By using the term "direct loans," do you

(Testimony of William H. Marx.)

mean to distinguish between some other loans appearing on the books? A. Yes.

Q. And what are those other loans?

A. A Mr. Ed Brehm had certain amounts, or he had amounts due him from the Arctic Gardens, Incorporated, and this liability was turned over to Mr. Forster. Now, the books would show that the corporation would be indebted to Mr. Forster for this liability, but I would like to distinguish between that liability and one where he put money in himself.

Q. In other words, Mr. Brehm transferred his indebtedness to Mr. Forster?

A. Yes. As I understand it, the consideration was very nominal, one or two dollars, I believe.

Q. Which would give Mr. Forster no cost basis?

A. That is correct.

Mr. Patten: Exhibit 262, please.

(Whereupon, exhibit was handed to Mr. Patten by the Clerk.)

Q. (By Mr. Patten): Mr. Marx, you are being handed Exhibit 262. It has been admitted in evidence. Do you recognize that, sir?

A. It is a general ledger of the Alpine Dairy.

Q. For what year, please, sir?

A. And Issaquah Creamery, as well.

Q. For what year, please, sir?

A. There are several years. Alpine Dairy for 1946; Issaquah Creamery for 1945; Alpine Dairy 1945; apparently these years run back to 1939.

Q. Referring to the portion of the ledger covering Alpine Dairy for the year 1946, does that rec-

(Testimony of William H. Marx.)

ord reflect any transfers of real estate by Alpine Dairy? A. Yes.

Q. What property is that, please, sir?

A. Well, it is a building on the—or piece of property adjacent to the Alpine Dairy on Rainier Avenue.

Q. And when was it transferred according to the books? [1229]

A. In 1946.

Q. Do you have the date of the entry, sir?

A. January 1, 1946.

Q. And to whom was that property transferred?

A. To the Hans and Evelyn Forster trust.

Q. And does Exhibit 262 show the depreciated cost basis of this property at the time of transfer?

A. Yes.

Q. And what is the depreciated cost basis according to Exhibit 262?

Mr. Griffin: If the Court please, might I inquire as to any purpose of this examination except the matter of net worth?

Mr. Patten: That is the purpose.

Mr. Griffin: If the Court please, as of February 5th, there is a stipulation in evidence as of net worth.

Mr. Patten: It does not include this item?

Mr. Griffin: All right, then.

Mr. Patten: I might explain the few items I am taking up because the accountants didn't agree at that time.

(Testimony of William H. Marx.)

Mr. Griffin: All right.

Q. (By Mr. Patten): Would you give us the depreciated cost basis? [1230]

A. \$30,510.06.

Q. Three thousand ten dollars and six cents?

A. That was \$30,510.06.

Q. Thank you.

Mr. Patten: 263, 213.

(Whereupon, exhibits were handed to Mr. Patten by the Clerk.)

Q. (By Mr. Patten continuing): Mr. Marx, you are being handed Plaintiff's Exhibits 213, 264 and 263, which have been identified as being, among other things, the disbursement records of the Issaquah Creamery for the years 1947, 1948 and 1949.

Have you examined—previously examined these records? A. Yes.

Q. Do these records reflect any payments to Mutual Life Insurance Company during the years 1947, 1948 and 1949? A. Yes.

Q. Will you give us the dates and the amounts of these payments, please, sir?

A. September 10, 1947, check number 9362, payable to Mutual Life, amount \$4,234.59; September 10, 1948, check No. 996, \$4,234.59; August 10, 1949, check number 2325, \$778.70; August 10, 1949, check number 2326, [1231] \$3,424.34.

Q. Mr. Marx, you are being handed Exhibit 249, which has been identified, among other things, as the disbursement records of the Issaquah Creamery

(Testimony of William H. Marx.)

for the year 1946. Have you previously examined that record? A. Yes.

Q. Does that record reflect any payment during the year 1946 to Apex Farms? A. Yes, sir.

Q. And what is the date and the amount of that payment?

A. February 1, 1946, ten thousand dollars.

Q. What was the purpose of that payment, sir?

A. To pay for stock purchased by Mr. Forster in Apex Farms.

Q. And that amount is included in the stipulated figure, is it, sir? A. Yes, sir.

Mr. Patten: Exhibit 154, please, sir.

(Whereupon, exhibit was handed to Mr. Patten by the Clerk.)

Q. (By Mr. Patten): Mr. Marx, you are being handed Plaintiff's Exhibit 154, which is a stipulation as to the cost of a barn constructed on Mr. Forster's home—farm. [1232]

Will you, without physically handing them to you, will you tell us if those expenditures appear on the books of Issaquah Creamery?

A. They do.

Q. Will you summarize for us the manner in which the expenditures shown on that stipulation were charged in the books of the Issaquah Creamery? A. The entire total was charged.

Q. Total?

A. Of \$14,784.81 was charged on the books of account of Issaquah Creamery to two types of business expense deductions. All of the items, with the

(Testimony of William H. Marx.)

exception of the two identified as labor were charged to Account 9, which is the Supplies Expense account of Issaquah Creamery. The amounts of labor were charged off as part—as wages.

Q. Thank you.

Mr. Patten: 249.

The Witness: Here it is.

Q. (By Mr. Patten continuing): Mr. Marx, you are being handed Exhibits 249 and 263, which have been identified as the disbursement records of Alpine Dairy and Issaquah Creamery for the years 1946 and 1947. Will you explain to the Jury how purchases of fluid milk were entered and charged on [1233] the books of Alpine Dairy and Issaquah Creamery during the years 1946 and 1947?

A. Payment for all milk delivered, either to Alpine Dairy or to Issaquah Creamery, was made by Issaquah Creamery by check.

Inasmuch as this payment covered milk used by the two organizations, there had to be a settlement with Alpine—in other words, a billing to Alpine for the amount of milk that Alpine received and utilized during the month.

The method used to arrive at this billing was to—was on the basis of the physical quantity of milk delivered. An example would be—assume that 100 gallons of milk were delivered to Issaquah and 100 gallons of milk delivered to Alpine during one month and the total paid was \$200. Then Alpine would be billed for \$100. I mean, that is the normal method.

(Testimony of William H. Marx.)

Now, actually, they had to go through a series of computations to arrive at that figure, but, essentially, that is the method that was used.

Q. How frequently was Alpine billed by Issaquah?

A. My recollection is that this computation was made once a month.

Mr. Patten: 264?

(Whereupon, Exhibit was handed to Mr. Patten.) [1234]

Q. (By Mr. Patten): Mr. Marx, you are being handed Exhibits 264 and 213, which have been identified as the disbursement records of Alpine and Issaquah for the calendar years 1948 and 1949.

During the years 1948 and 1949, do the records show that Alpine Dairy paid Issaquah Creamery the weighted average cost of milk purchased by Issaquah for distribution by Alpine?

A. No.

Q. Will you explain?

A. In the year 1948 for seven of the twelve months, the practice that I have referred to with respect to the previous years was continued. In other words, there was no change. However, in five of the twelve months, a computation was made, the same type of computation, and then after a total figure—a billing figure to Alpine was arrived at, a ten thousand dollar amount was deducted from the previously arrived at figure, so the effect of it was doing the year for five months, a total of fifty

(Testimony of William H. Marx.)

thousand dollars in these reduced amounts were reflected in the billings.

Q. What was the amount by which the billings to Alpine were reduced in the year 1948?

A. Fifty thousand dollars. [1235]

Q. During the year 1949, did Alpine pay Issaquah the weighted average cost of milk?

A. No.

Q. Was—how many of those billings were similarly reduced? A. Four.

Q. What was the total amount by which these billings were reduced during the year 1949?

A. Forty thousand dollars.

Q. Very generally, Mr. Marx, what is the accounting effect of Issaquah Creamery billing Alpine Dairy ninety thousand dollars less than the amount Issaquah actually paid for the milk used by Alpine?

A. It would have the effect of reducing the taxable income for Issaquah Creamery for the year 1948 by fifty thousand dollars, and reducing the taxable income for the creamery in 1949 by forty thousand dollars.

However, the effect would be that—the offsetting effect with respect to Alpine Dairy would be to add to the taxable income.

Q. Of Alpine Dairy? A. That is correct.

Q. It would be a transfer of income? [1236]

A. That is correct.

Q. Do the books of Issaquah Creamery reflect any indebtedness to Mr. Hans Forster during the years 1945 to 1949? A. Yes.

(Testimony of William H. Marx.)

Q. Do these books reflect payment of interest on this indebtedness? A. Yes.

Q. Will you give us the dates and the amounts of these interest payments?

A. December 28, 1945, check No. 6818, \$1,875.00; February 28, 1946, check No. 7057, six hundred dollars; October 2, 1946, check No. 7952, \$250.00; December 28, 1946, check No. 8290, one thousand dollars; December 10, 1947, check No. 9782, one thousand dollars; and December 10, 1948, check No. 1352, three thousand dollars.

Q. Mr. Marx, you are being handed documents which have been marked for purpose of identification as Plaintiff's Exhibits 265, 266, 267, 268 and 269. I ask you if you recognize these documents?

A. Yes.

Q. What do you recognize them to be, sir?

A. They are pencilled copies of tax returns for the years 1945 to 1949. [1237]

Q. Do you recognize the handwriting on those documents? A. Yes.

Q. Do you recognize it to be whose handwriting?

A. Mr. L. Hicks Taylor.

Mr. Patten: I would like to offer Exhibits 265 through 269 in evidence.

Q. (By Mr. Patten): These are the returns of Mr. Hans Forster——

A. (Interposing) That is correct.

Q. (Continuing) ——or working copies?

Mr. Le Sourd: If the Court please, we will make the same objection to these that we have to the

(Testimony of William H. Marx.)

working papers on the ground of the manner in which they came into the possession of the Government, and the question of privilege.

The Court: Just for the record, is it a fact that these documents came into the possession in the same manner as the other?

Mr. Patten: I believe that—I believe that to be true.

Mr. Le Sourd: We want to preserve our record on this matter.

The Court: Yes. I don't think there is anything to show that point yet. That is why I am [1238] asking the question.

Mr. Patten: I believe the same facts apply.

Mr. Le Sourd: That is my information.

The Court: The record may so show, and the record may show the objection, and the objection is overruled. Those other records in the evidence were work sheets, weren't they? Should we identify them more definitely?

Mr. Le Sourd: Yes, the other ones were work sheets, and these are pencilled copies of the returns.

The Court: Do you recall, offhand, the number of the exhibits?

Mr. Le Sourd: The previous ones, your Honor?

The Court: Yes, *your Honor*; to which previous objection was made.

Mr. Patten: 257 is one.

Mr. Le Sourd: 259 and 259-A.

The Court: The same objection made to those exhibits may show as made to these.

(Testimony of William H. Marx.)

Mr. Le Sourd: 257.

Mr. Cox: And 259-A.

The Court: Is that in accordance with the Government's information? [1239]

Mr. Patten: Yes, that is agreed.

The Court: Now, is there anything—any other objection?

Mr. Keesling: I would like to finish looking at it.

Mr. Patten: I wonder if I might have exhibits 2, 16, 71, 167 and 249? I think 249 is here.

Mr. Keesling: We have no objection.

The Court: Mr. Griffin?

Mr. Griffin: I have no objection, except that I think in fairness to Mr. Taylor the one sheet here is not in his handwriting on Exhibit 265. If I may inquire on voir dire?

Mr. Patten: Proceed.

Mr. Griffin: This yellow sheet, Mr. Marx, you perhaps didn't look at in going through them. That is not in Mr. Taylor's handwriting, is it?

The Witness: No. Might I elaborate a little?

Mr. Griffin: Yes.

The Witness: I mentioned that there were supporting documents with the pencilled copies.

Mr. Patten: Oh, yes.

The Witness: And I was including this as one of these documents. [1240]

Mr. Griffin: It has a name on it. I don't know if it is a signature or not, of R. A. Jordan?

The Witness: Yes, that is correct.

(Testimony of William H. Marx.)

Mr. Griffin: I have no objection, if the Court please.

Mr. Le Sourd: In whose handwriting, or whose name is on this particular sheet?

A. I don't know whose handwriting it is.

Mr. Patten: I would surmise that that is the Mr. Jordan who testified here. It seems to concern stock matters.

Mr. Le Sourd: That is my understanding.

The Court: You have no objection other than the general objection made?

Mr. Le Sourd: That is right, your Honor.

The Court: Then, as I understand, there is no objection?

Mr. Griffin: No, your Honor.

The Court: Apart from the one that the Court ruled upon.

Exhibits 265, 266, 267, 268 and 269 for identification may be admitted.

(Plaintiff's Exhibits Nos. 265 through 269, inclusive, admitted in evidence.)

Mr. Patten: Your Honor, I have just one or two [1241] more matters to go into. One of them may be of a little length, and I am calling your attention to the fact that it is about recess time.

The Court: Ladies and Gentlemen of the Jury:

We will recess now for luncheon, and the Court calls your attention to the admonition given you on similar occasions, and I ask that you heed it on this occasion.

You may now be excused until 1:45.

(Testimony of William H. Marx.)

(Whereupon, the Jury retired from the Courtroom.)

The Court: It is stipulated the Jury have left the Courtroom?

Mr. Moriarty: Yes, your Honor.

The Court: There is one matter, Gentlemen, before we recess that I want to call Counsel's attention to in connection with the testimony of this witness, and that is the statement made by Mr. Kachlein regarding Mr. Taylor. Does the Government ask that that stand?

Mr. Patten: It went in without objection.

Mr. Le Sourd: If the Court please, we were going to bring that statement out as part of our direct.

The Court: Of course, it will come then if it is admissible. The question in my mind now is as to a [1242] statement made as hearsay by this witness.

Mr. Le Sourd: Yes.

The Court: And I would propose to strike it.

Mr. Moriarty: It is hearsay, if your Honor please.

The Court: There is no question about that, and I was wondering whether the Government had any theory upon which they were offering it?

Mr. Patten: No, not other than giving the entire conversation.

The Court: Of course, in your case, that is on a different theory.

Mr. Le Sourd: Yes.

(Testimony of William H. Marx.)

The Court: The Court will strike it, unless there is objection.

Mr. Le Sourd: Well, will the Court advise the Jury then that it is being stricken as hearsay at this point?

The Court: I will do that, after we resume.

This case will be recessed until 1:45, and the Court will remain in session.

(Whereupon, at 12:15 o'clock p.m. a recess was had in the within-entitled and numbered cause until 1:45 o'clock p.m. March 11, 1954, at [1243] which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: Mr. LeSourd, do you have a matter?

Mr. Le Sourd: Yes, if the Court please. I would like to be heard further on the proposed action of the Court to strike this testimony of Mr. Marx as to Mr. Kachlein's statement.

In giving the matter further consideration, it appears to us that this is not hearsay and is relevant.

If this statement, which Mr. Marx testified was made by Mr. Kachlein, were offered as proof of the facts therein stated—in other words, that Mr. Taylor—the troubles of Mr. Forster were due to Mr. Taylor's work—then it would be hearsay; but the relevance of this statement in this case, if your Honor please, is the fact that Mr. Kachlein made it, and as such, that is not hearsay, and we say it is relevant to an issue which has been tendered in this

(Testimony of William H. Marx.)

case by the opening statement and adherence to this case throughout.

There was testimony introduced, or, rather, it has been testified to here statements made by the Defendant Forster, in which he states that he was advised to do such and such by Mr. Taylor, or other statements [1244] concerning what Mr. Taylor has done. Other witnesses, who are still associated with or working under Mr. Forster, have testified that Mr. Taylor told them to do this or that item.

In the opening statement, Mr. Griffin took the position that they would show that these troubles were the fault of the Defendant Taylor, and in my opening statement, I tendered the issue that we expected to show by evidence in this case, that there had been a deliberate attempt here to place the blame on the defendant Taylor.

In view of the fact that the statements of Mr. Forster have been testified to and presumably in view of Mr. Griffin's opening statement that further testimony of that sort by Mr. Forster can be expected and in view of the testimony of other witnesses still associated with Mr. Forster, we feel that this statement by Mr. Kachlein is certainly relevant and admissible.

Here is a statement, your Honor, where at the very initiation of this investigation, at a time when Mr. Marx had not made any study of the affairs of this company, at a time when, apparently, the representatives of the Defendant Forster themselves

(Testimony of William H. Marx.)

had made no detailed study of these matters, we find Mr. Kachlein, then acting as Attorney for Mr. Forster, and, as we will show, at this time and for a long time thereafter acting as the attorney for Mr. Taylor, we find Mr. [1245] Kachlein at that time before any investigation is made, making a statement to the United States that if there were error, it was undoubtedly due to the sloppy work of Mr. Taylor.

We believe that that is evidence—the fact that that statement was made is evidence in and of itself from which the Jury could conclude, or, it among other things would support a conclusion by the Jury, that there had been a deliberate attempt here to place the blame on Mr. Taylor, and, as such, it is relevant and admissible evidence in the case.

Now, the fact that it goes to a defense tendered by a defendant doesn't mean it is to be excluded when it comes in in the Government's case.

I certainly know of no rule that if the Government brings in evidence in its case that supports an issue or theory of defense tendered by the defendant that it must be excluded at that point, and then again offered by the Defendant.

We feel that this is certainly admissible here, and we wish to strongly object to any elimination of it by motion to strike at this time, because, certainly, in the minds of the Jury, even though that evidence were later offered and admitted, the fact it as stricken the first time would cast some doubt

(Testimony of William H. Marx.)

[1246] upon it, and we think it highly improper in this case.

The Court: Mr. Griffin?

Mr. Griffin: If the Court please, I assume that your Honor's idea in striking that statement was to eliminate from this case the issue that Mr. LeSourd is talking about, and I have never been sure it wouldn't be until the evidence develops, whether or not we would be in a position to meet that opening statement by evidence in this case, it being a completely collateral issue.

I readily understand that if this statement remains in, I think it is wide open to us to meet that opening statement, and, as far as I am concerned, the statement can remain in.

Mr. Moriarty: The Government has no objection to it remaining in, if your Honor please.

Mr. Griffin: I would want it to be understood, at least, that it is my theory if it does remain in, it does present what I consider an entirely collateral matter, based on their opening statement, and that if it does remain in, we certainly must and will resist all going into it.

The Court: Well, it appears to me it came in, and, as I considered the matter, that by letting it remain in, it certainly offers—gives, at least, some [1247] basis for meeting it.

In other words, if that statement stays in, that part of the testimony, I assume that both on cross-examination and possibly on the Defendants' case,

(Testimony of William H. Marx.)

testimony may be properly offered, and may be properly admitted, and, possibly, excluded.

I wouldn't say now on the issue, but at least, it raises a question.

Now, up to this point, granted that the opening statements have brought up the issue, I don't recognize that that creates an issue, and so long as the Government is putting in its case, there is no issue involved; at least, there has been none so far and the Government states there is none, and do not offer that statement on any grounds—it is merely a volunteered statement. It is clearly hearsay, and could be damaging, and I believe that the record is better protected under all the circumstances, to have the matter stricken.

Now, if, as we proceed, some way the matter becomes an issue, we can consider it then.

It may or may not be. I think I indicated, Mr. LeSourd, earlier, that I questioned whether the issue is proper, and this memorandum may be the one. [1248]

Mr. Le Sourd: No, this is not the memorandum. I have a memorandum in preparation on that, outlining what we expect to prove, and why we think it is relevant. It is not yet ready for presentation. I had not expected, frankly, to have to present it until we came to our case, and evidence was offered then, but here we have this statement brought in now by the Government completing a conversation to which this witness testified.

Your Honor has admitted in several situations

(Testimony of William H. Marx.)

evidence to complete a conversation. Your Honor has admitted——

The Court: Excuse me a moment on that. There was no defendant present at the time this statement was made.

Mr. Le Sourd: That is true.

The Court: I don't know whether the contention will be made that Mr. Kachlein's presence could be in a way considered the presence of Mr. Forster, but at the time this statement was made, it is my recollection that no defendant was present.

Mr. Le Sourd: No, but Mr. Marx testified that Mr. Kachlein had stated he was representing Mr. Forster and it is not hearsay, your Honor, unless it is offered as proof of what is stated therein.

If the fact that the statement is made [1249] itself is relevant, there is no hearsay involved, and the only question——

The Court: (Interposing) You mean, if the question of whether or not it was said was involved?

Mr. Le Sourd: That is right; if the question of whether or not it was said is the important thing, then there is no question of hearsay.

The Court: But there isn't any issue on that.

Mr. Le Sourd: I beg to differ. We feel that this issue adhered throughout all this testimony.

The Court: By virtue of your opening statement?

Mr. Le Sourd: The testimony itself plus the opening statement. The hearsay statements, if I may say so, of Mr. Forster, that have been testified

(Testimony of William H. Marx.)

to at length on the stand, in which he blames Mr. Taylor for one thing or another. That, in itself, tenders the issue of Mr. Forster's credibility in making those statements, and we certainly have the right to meet that in this case, and if the evidence in this case—and this is part of the evidence—indicates or would indicate or tend to indicate to the Jury that there was a deliberate attempt here to make Mr. *Forster* the scapegoat or place the blame on him, that is certainly [1250] something we can bring to the Jury in this case, and it is highly relevant on Mr. Forster's credibility, and on the credibility of associates and employees of his that still are employees and their credibility will be strongly affected by any evidence we can put on that will tend to show that there was a recognized attempt to place the blame for this on Mr. Taylor and that Mr. Kachlein's position in the case was included in that and played a part in it.

Certainly, your Honor, it would be a gross miscarriage of justice not to permit us to bring that to the attention of the Jury and show that in this case, and here is a statement that has a bearing on that, and attempts to indicate it.

The contention is not the proof of what was said, but the fact it was said, and the time it was said, is highly important. It is evidence that is material and relevant, and we feel that it may properly come in at this time, as well as any other time.

The Court: Of course, your argument, Mr. Le-

(Testimony of William H. Marx.)

Sourd, is based upon the position that you propose to advance and which you have.

Mr. Le Sourd: Well, the position which I have advanced.

The Court: Have advanced in your opening statement. [1251]

Mr. Le Sourd: Yes, your Honor, and again advance at this time.

Mr. Moriarty: May I make a suggestion to your Honor that it might be appropriate to withhold the question of striking this testimony at this time until your Honor rules for the Government is not in position now to discuss whether or not this episode would be a matter of defense, but at the time when your Honor rules, it would be a time when your Honor could appropriately refer to it.

The Court: I am particularly concerned about letting it stand and then be used as making it the basis of an issue.

Of course, when you come to the cross-examination, the matter may come up again, particularly in view of Mr. LeSourd's objection on behalf of Mr. Taylor. I am not so concerned about letting it remain as a hearsay statement.

Mr. Moriarty: Mr. LeSourd is the only one that could possibly object to it.

The Court: Well, the other question is, are you creating or making available an issue which might otherwise be—— [1252]

Mr. Moriarty: (Interposing) Of course, the

(Testimony of William H. Marx.)

Government is not anxious to have any false issues present.

Mr. Le Sourd: May I suggest this: that before we make this an issue in our own case, we intend to submit to your Honor the outline that we have mentioned. In fact, it is being prepared now, and before we offer any evidence of our own on that issue, we will submit that matter to your Honor for decision and until that time, I don't see where this particular bit of evidence is going to be referred to in connection with that issue.

The Court: If there is no objection from other counsel, I would pass the matter now, and will not strike it with the understanding that if Counsel on cross-examination insist on going into that matter, then, of course, I will have to rule. * * * * * [1253]

Cross Examination

Q. (By Mr. Griffin): Put it in this way; in the converse: "Were you conscious, at any time, of anything being withheld from you by the accountants or by Mr. Kachlein in connection with this investigation? In other words, do you feel you had full cooperation insofar as it was within their power?"

A. Well, there was one incident that possibly I should relate the circumstances to——

Q. (Interposing) Fine.

A. (Continuing) ——in regard to your question.

Mr. Kachlein, from the start of the case indicated that he wanted—in other words, any accounting work that was necessary, he was going to see to it

(Testimony of William H. Marx.)

that it was going to be done, and I indicated that then, and later, that we were going to have to analyze this net worth on a year by year basis, and the original—the accountant, Touche, Niven, Bailey and Smart, indicated that they were willing to carry out that particular request.

Now, after—or, shortly before, we were presented with this May 31, 1950 statement that you made reference to, we requested year by year net [1288] worth statements; in other words, showing the year-end net worth as has been developed in this trial from those figures, and the accounting firm, and particularly Mr. Tremper indicated that, although he had agreed to carry out this work, that he would not do so, and he stated that there was a question in his mind whether there might not be some problem of legal liability between the firm and Mr. Forster if such a statement was prepared, and submitted.

So, I went back and discussed the matter with Mr. Kachlein, and said that apparently we were in the position where from that point on, we were going to have to work it out ourselves, and, as I recall it, Mr. Kachlein was very disturbed about it, and he stated that “Just name the firm that you want, and we will find them. We will fire Touche, Niven.”

I told him that I felt, under the circumstances we would try—I suggested an alternative approach, that we would work together and attempt to develop the figures.

(Testimony of William H. Marx.)

So, from that point on, these net figures were worked out primarily by me, and we received no report from Touche, Niven or any other accountants, breaking down this year by year shortage.

I don't mean to imply a lack of cooperation there, but that is the problem that existed, and [1289] it did require a lot of work on my part.

I spent 159 working days on this case.

* * * * * [1290]

The Court: Have you finished an answer you wanted to complete?

The Witness: No, I wasn't finished at all.

Q. (By Mr. Keesling): Will you finish, Mr. Marx?

A. This particular transaction that we are discussing involves——

Mr. Le Sourd: Could I ask Mr. Marx to speak a little louder?

The Witness: Yes.

A. (Continuing) The particular transaction we are discussing here involves a purchase of butter from the—a purchase of butter by the R. L.—by the Issaquah Creamery Company from R. L. Stephenson and Company.

Issaquah Creamery issued a check in December, 1949, for some eighteen thousand dollars to pay for this purchase of butter. The butter—in other words, it is a bona fide transaction insofar as this first check is concerned. The check was issued. Mr. Stephenson deposited it in his bank account.

Now, in January, or as of December 31, 1949, an

(Testimony of William H. Marx.)

[1347] entry was made on the books of the Issaquah Creamery Corporation to reflect a liability to Mr. Stephenson as of December 31, 1949, which did not in fact exist, if the amount that was due him had previously been paid some two weeks before.

The entry in the books was a—was to set up a liability to Mr. Stephenson and the offsetting entry was to increase the cost of butter purchases for the year, so far as tax purposes were concerned. The effect was that they claimed this same transaction twice on their tax return as a tax deduction.

Now, in January of 1950, January 10, as I recall it, is the date of the check, a check was issued in favor of Mr. Stephenson. His name was written on the check. The check, as I recall it, was signed by Mr. Erickson.

The handwriting, or the name R. L. Stephenson on the front, was in Mr. Erickson's handwriting, and on the back of the check was an endorsement, R. L. Stephenson, in ink, which was a fictitious endorsement and which was made by Mr. Erickson.

He took this check and he deposited it in the Issaquah Creamery bank account, and he made an entry on the books to record it as income, and the effect of it was to cancel the—it was to wash the entry out in [1348] a way as to conceal the fictitious tax deduction that was claimed on the tax return for the year 1949.

Q. There was one thing you have left out. The effect, also, Mr. Marx, was it not, when the check was written through to clear the entry, to show in-

(Testimony of William H. Marx.)

come that was not received; that is exactly my point? A. That is correct.

Q. It shows income that was not received and would be taxable, but it wasn't received so the offsetting effect would be nil except to throw it into the 1950 tax year?

A. Or, if I may say, to conceal the fact that a fictitious deduction was claimed on the 1949 tax return.

Q. Did they offset that with income in that amount which was not actually received?

A. There was an entry made which was later reversed.

Q. Yes. A. To cancel that out.

Q. Yes.

* * * * * [1349]

Mr. Griffin: The Defendant Forster joins in the motion as made, if we may, without reiteration, in the striking of the testimony of Neukirchen, the No. 2 motion that you numbered.

He also joins in the striking of the testimony of Egeness, as made, with reference to Exhibit 278 and Exhibit 279, and upon the grounds stated by Counsel, if we may do that without re-stating.

The Court: Yes.

Mr. Griffin: I want to say this to your Honor, that if that motion is granted, certain other motions will have to follow, and I do not want to mislead the Court in that particular, because, in my opinion, if the Court should grant the motion in regard to Egeness, there are certain vital motions then that

affect the heart of this case if the Court grants it, and I do not want to mislead your Honor in my acquiescence with that motion.

Now, the Defendant Forster challenges the sufficiency of the evidence and moves for judgment of acquittal as to each count separately, and all counts generally upon the ground and for the reason of objections [1373] heretofore made and overruled by the Court that are in the record, and offers of proof made and rejected, matters occurring during the trial to which exceptions have been taken and primarily upon the ground and for the reason that the evidence of the plaintiff is not sufficient to warrant any verdict in this case by the Jury as to any count and to the Indictment as a whole except one of acquittal.

The Government has failed to establish the basic and primary situation that must exist for this cause to go to the Jury. That is, the guilty intent of the Defendant Forster, no matter what may have occurred in the bookkeeping department. And the Government's evidence has failed to establish any given intent that has developed from the witness stand, and the exhibits on the part of the Defendant Forster, but on the contrary, the Government has affirmatively established by its testimony that the Defendant Forster relied upon an accountant in the accounting for the firm and for himself since the year 1932.

The Government firmly established from the stand Mr. Forster thought and so stated that all income had been duly and regularly entered upon the

books and records, and that all items chargeable to him had been entered and so charged. That was the proof, [1374] undisputed, and established by the Government itself in this case.

Upon that basis, and I make the motion for acquittal upon each count separately and all counts in the indictment as a whole.

The Court: Well, the Court will deny the motion of acquittal as indicated by Mr. LeSourd in regard to Mr. Taylor's motion.

As to the motion, particularly the one as to 278, and 279, and the testimony of Egeness, and the similar motion of—made similarly to that made by Mr. LeSourd, the Court will reserve ruling.

Mr. Keesling: The Defendant Erickson renews his motion to strike all of the testimony. The motion as previously made to strike all the testimony of Miss Neukirchen and Mr. Krumbah relative to the matter of the ice cream quota prior to the Indictment period.

The Court: That is Neukirchen and Krumbah?

Mr. Keesling: Yes.

The Court: That is the same motion you made.

Mr. Keesling: Yes, and we have previously expressly joined in the motion of Defendant Taylor relative to the striking of all the Egeness testimony [1375] and the Holtberg testimony concerning the payments to Mrs. Finstad.

(Whereupon, further motions were made by Mr. Keesling for and on behalf of the Defendant Erickson and the following proceedings were then had, to-wit:)

The Court: I take it the Government is not conceding any of these motions of acquittal for defendant Forster and the defendant Erickson?

Mr. Patten: No, your Honor.

The Court: The Court will deny, in all probability, but will not formally do so until tomorrow the motions to acquit, but will consider the motions as to Egeness and Neukirchen over the evening, or overnight, and will rule on them in the morning. That concludes the motions.

* * * * * [1376]

RAYMOND J. SCHNEIDER

upon being called as a witness for and on behalf of the defendant Forster, and having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Brody): Will you state your name, once more, for the Jury, please?

A. Raymond J. Schneider.

Q. And will you state your connection with Renton Ice and Ice Cream Company from the time of its founding until the present time?

The Court: Wasn't that all covered before when the witness testified?

Mr. Brody: If your Honor please, this is the only question I intended to refresh the Jury's recollection as to who Mr. Schneider is.

A. President and Manager.

Mr. Brody: May I have this marked?

(Testimony of Raymond J. Schneider.)

The Clerk: Defendants' Exhibit A-42 marked for identification.

(Defendants' Exhibit No. A-42 marked for identification.)

Q. (By Mr. Brody): Showing you Defendants' Exhibit A-42, for [1538] identification, Mr. Schneider, can you identify it?

A. It is the record book of our inventory taken at the end of each month for a profit and loss statement.

Q. Will you state the period which it covers?

A. August 16, 1942, which was the day we started and this takes it through January 1, 1946.

Q. And was that inventory taken under your supervision? A. Yes.

Q. And the book kept under your supervision?

A. Yes.

Mr. Brody: Mr. Patten, I believe you have the tax return of the Renton Ice and Ice Cream Company for fiscal year ending 1943.

Will you mark this?

The Clerk: Defendants' Exhibit No. A-43 marked for identification.

(Defendants' Exhibit No. A-43 marked for identification.)

Q. (By Mr. Brody): Now, showing you what has been marked for identification as Defendants' Exhibit No. A-43, can you identify it, Mr. Schneider?

A. It is the income tax return for the year ending July 31, 1943, I believe. [1539]

(Testimony of Raymond J. Schneider.)

Q. Does your signature appear on that tax return? A. Yes, it does.

Q. In what capacity? A. President.

Q. And is that, in fact, your signature which you subscribed to that tax return?

A. Yes, it is.

Mr. Brody: These exhibits, at this time, are offered for identification only. I have no further questions of the witness.

Mr. Patten: No objection to Exhibits 42 and 43.

The Court: You mean they are offered for identification—they are offered, or just being identified?

Mr. Griffin: We will offer them.

Mr. Cox: I would like to ask the witness some questions on voir dire.

The Court: You may.

Cross Examination

Q. (By Mr. Cox): With respect to what has been identified as Defendants' Exhibit A-42, you said you kept this record, Mr. Schneider?

A. I usually kept it all the time. I probably could tell by looking through it. [1540]

Q. This is your handwriting, is it, at the outset of the period? A. Yes.

Q. Is that your handwriting? A. Yes.

Q. Is that your writing? A. No.

Q. Is that your writing? A. No, it isn't.

Q. Is that yours? A. No.

Q. Or that? A. No.

Q. Or that? A. No.

(Testimony of Raymond J. Schneider.)

Q. Or that? A. No.

Q. Or that? A. No.

Q. Or that? A. No.

Q. Or that? A. No.

Q. Or that? A. No. [1541]

Q. That is yours? A. Yes, sir.

Q. These are yours on these pages?

A. Yes.

Q. Is that your writing? A. No.

Q. Is that your writing? A. No, that isn't.

Q. For the month in which all the entries were made in someone else's writing, Mr. Schneider, did you actually take the inventory?

A. Yes, I took the inventory on this.

Q. The inventory, but you did not make the record?

A. They were written up in advance, the sheets, with the items, and then they were filled in when the inventory was taken.

Q. In these periods when the writing is not yours the figures are yours?

A. Yes, they are.

Q. Those are yours? A. Yes, they are.

Q. Is this your writing, the items here?

A. No.

Q. Are these figures yours? [1542]

A. Yes.

Q. Are these figures yours?

A. I think they are.

Q. You are not sure?

A. Let me see, again. I would say in that one

(Testimony of Raymond J. Schneider.)

that some are mine, and some are the the office girls'.

Q. Some are the office girls'? A. Yes.

Q. Would that be true of other months?

A. They are hardly ever mixed.

Q. Are those figures yours, January, 1945?

A. No, the are not mine.

Q. Are any of them yours? A. I think not.

Q. How about February, 1945, were any of those figures yours? A. I believe not.

Q. How about March, 1945, were any of the figures yours? A. No.

Q. That appears to be true of a good many of these months?

A. Oh, yes; we kept them on a separate little board with the blank sheets on them, and they were extended and put in here.

Q. In this book, you did not actually use [1543] it in taking the inventory?

A. Not as a rule.

Mr. Cox: We will object to the admission of these documents, your Honor, for the reasons stated yesterday by Mr. LeSourd and for the further reason that in the case of Defendants' Exhibit A-43 it refers to a time outside the period covered by the Indictment, and to a company not concerned in the Indictment, and to the exhibit identified as Exhibit A-42 to the extent that it refers to a period outside the period covered by the Indictment, and for the reason, likewise, that it is concerned with

(Testimony of Raymond J. Schneider.)

a separate corporation, whose tax return is not here involved.

The Court: Your first objection is the one made to the——

Mr. Cox: (Interposing) We object to the whole of each exhibit on the ground that it is irrelevant and immaterial and that it relates to a corporation not involved in the Indictment here under consideration.

We object further to the tax return, and to the portion of this book, Defendants' Exhibit A-42, on the ground that in addition to relating to an extraneous corporation, it also relates to a time not covered by the Indictment.

The Court: As to the first, I understand it is [1544] the same objection as made to A-34.

Mr. Cox: Yes, your Honor, and that series.

The Court: That objection would be overruled insofar as it is the same objection. As to the secondary and more specific objection, is it being offered for any period,—I am talking now of A-42—for any period other than that covered in the Indictment?

Mr. Brody: Your Honor, we will represent that the relevance of this will become clear in the testimony of Mr. Gorans, who will be the witness following the next witness.

Mr. Cox: Will his testimony be within the Indictment period only?

Mr. Brody: His testimony will relate to a period prior to the Indictment period, and it will be our intention at that time to show an intent connected

(Testimony of Raymond J. Schneider.)

up with transactions in the Indictment period.

The Court: That, of course, will depend upon testimony—admissibility will depend upon testimony as it comes in.

I think the Court would have to sustain the objection as to that period until such time as the testimony comes in, at least.

Now, as to A-43, is that the tax return of Renton Ice? [1545]

Mr. Griffin: Yes, your Honor.

Mr. Brody: That is correct, your Honor.

The Court: It wouldn't appear to be admissible as a tax return. If connected up later, it may be re-offered. The Court is inclined to sustain the objection now on the showing made.

Mr. Obenour: With this witness, we would ask a couple of questions pertaining to Exhibit 43. It is possible that it might subsequently be admitted as I understand the Court's ruling.

The Court: Yes, any question you may wish to ask now as to identification of the document——

Mr. Obenour: On the document itself?

The Court: Only for identification.

Mr. Cox: We would object to any question on the document, itself.

Cross Examination

Q. (By Mr. Obenour): Who prepared this exhibit, 43, the tax return, Mr. Schneider?

A. Mr. Taylor, I believe.

Q. Did you examine it before you signed it?

(Testimony of Raymond J. Schneider.)

A. I don't know.

Q. Is Officers' Salary, and referring to R. J. Schneider, is that you? [1546]

Mr. Cox: If the Court please, we object to any question as to a specific item in the exhibit as to testimony relating to the exhibit, and a period outside of the Indictment.

The Court: Is this something this witness entered?

Mr. Cox: As I understand his answer, I am not sure he read it.

Mr. Obenour: He signed it. I am asking if this is the same, under the Schedule "F" for compensation of officers, if he is the man who is listed there under the officers?

The Court: Well, is it a typewritten name?

Mr. Obenour: Yes.

Mr. Cox: The document is not in evidence, your Honor.

The Court: Well, I think possibly as to the name—you say you don't know whether you have read it or not?

The Witness: I am not sure that I did.

The Court: Well, he probably wouldn't know what is in there, then.

Mr. Obenour: No other questions.

Mr. Brody: No further questions, your Honor.

The Court: That is all. [1547]

(Witness excused.)

The Court: Mr. Schneider is still under subpoena.

Mr. Brody: Subject to call.

The Court: Subject to call.

Mr. Moriarty: Objection is sustained at this time to both documents, your Honor?

The Court: No, objection was sustained to document A-43 and to A-42 insofar as it related to a period outside of the Indictment. It is restricted now to a period included within the Indictment.

The Clerk: A-42 is admitted?

The Court: With limitations.

(Defendants' Exhibit A-42 admitted in evidence.)

Mr. Cox: We object to its admission at all, your Honor.

The Court: That is on the general——

Mr. Cox: (Interposing) On the general ground and on the ground of irrelevance of any record of Renton Ice and Ice Cream Company at this stage of the case.

The Court: I take it this portion covered within the Indictment could relate to matters covered by the Government's proof.

Mr. Cox: That was not our understanding, but [1548] so long as the record shows our objection on that ground as well as the general grounds——

The Court: (Interposing) I am giving you my distinction.

Mr. Brody: Miss Simonson? [1549]

MARY MAUD SIMONSON

upon being called as a witness for and on behalf of the Defendant Forster, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: I want your name, please, and the spelling of your name.

The Witness: Mary Maud Simonson, S-i-m-o-n-s-o-n (spelling).

Q. (By Mr. Brody:) Will you please state your full name for this Jury, Miss Simonson?

A. Mary Maud Simonson.

Q. And your address?

A. Stanwood, Washington.

Q. And by whom are you employed?

A. Garrison & Company.

Q. And where is that?

A. Camano Island, and the address is Stanwood, however.

Q. And in what capacity are you presently employed?

A. I am the bookkeeper, the only bookkeeper.

Q. Were you ever employed by Finstad and Utgard, Incorporated, at Conway, Washington?

A. Yes, sir.

Q. What was the period of your employment?

A. I was employed there in 1945 until that creamery was sold to Darigold.

Q. And what was the date of that sale, or in what year did it take place?

(Testimony of Mary Maud Simonson.)

A. 1952, if I remember correctly. I was there 7½ years, anyway.

Q. And what were your duties at Finstad and Utgard?

A. I was the bookkeeper, and I might say, the only bookkeeper, although there was an older man in the office who assisted in that he kept the record of the employes of the plant.

Q. And who was that? A. Mr. Utgard.

Q. And aside from that, was there any other regular bookkeeping personnel employed at Finstad and Utgard? A. No.

Q. And will you state what books and records you kept at Finstad and Utgard?

A. Well, all the records that were kept, except, as I said, the payroll account was kept by Mr. Utgard and Mr. Utgard, when I first went there, checked the bank balance [1551] but after a short time, I did all the reconciliation of bank statements and all the deposits.

Q. And in the years 1946 through 1949, who made out the monthly statements at Finstad and Utgard?

A. I did, as far as our office is concerned, if that is what you mean. They were turned over to the auditor.

Q. And who was the auditor?

A. Mr. Taylor.

Q. And will you describe the so-called statements which you prepared?

A. Well, unless you want me to go into detail,

(Testimony of Mary Maud Simonson.)

it is rather difficult to describe. I kept an accounts receivable, and kept an account of their cheese and a daily gas record, and a record of our petty cash but the report made out to Mr. Taylor was made on columnar pads.

Q. And did you make any typewritten report to Mr. Taylor? A. Yes, I did.

Q. And what was the nature of that report?

A. It was simply a summary of all of these things taken from the columnar pads, and from the inventory.

Q. And will you state under what circumstances you began to make such a record?

A. I did it, myself. It was my own idea to speed [1552] up the work at the time Mr. Taylor came, because you know, yourself, if you have four or five large columnar pads, it is hard to keep looking them over, so I thought it would be more concise if I put them on one pad.

Q. And did you, in fact, turn the sheets over to Mr. Taylor? A. I did.

Q. And what time did you give them to him?

A. At the time he came to audit the books.

Q. And how often did he come?

A. Once a month.

Mr. Brody: Will you mark this as one exhibit.

The Clerk: Defendants' Exhibit No. A-44 marked for identification.

(Defendant's Exhibit A-44 marked for identification.)

Q. (By Mr. Brody): Now, showing you, Miss

(Testimony of Mary Maud Simonson.)

Simonson, what has been marked as Defendants' Exhibit No. A-44, can you identify those records?

A. I identify them in this, that I recognize them.

Q. And what—and as what do you recognize them?

A. As a monthly statement, two months, really, [1553] the summary of two months.

Q. And were those statements prepared by you?

A. Yes, they were.

Q. Are these statements to which you have referred as the ones which you prepared for Mr. Taylor?

A. Yes, they are.

Q. And will you go through the statements to check that they are your statements and tell us the months which they cover?

A. Do you wish me to state that to the Court?

Q. Yes, state it to the Court and the Jury.

A. November and December, 1946; October and November, 1946; September and October, 1946; August and September, July and August.

Q. Is this 1946 to which you refer, Miss Simonson?

A. That is correct; 1947, November and December, 1947; October-November of 1947; September-October of 1947; August-September of 1947; July-August of 1947; June-July of 1947; May and June of 1947; April and May of 1947; May and April, 1947; February and March of 1947; January and February of 1947.

And this other one was December and January, December, 1946 and January, 1947.

(Testimony of Mary Maud Simonson.)

November and December, 1948; December [1554] of 1948 and January, 1949.

Mr. Brody: I will now offer A-44.

(Whereupon, there was a brief pause.)

Mr. Patten: No objection.

Mr. Le Sourd: May I inquire, your Honor?

Cross Examination

Q. (By Mr. LeSourd): I notice that some of these are on the yellow paper, and some on white paper. Are these all copies that were kept in your office?

A. It never made any difference what kind of paper they were done on. It was just my idea. I could do anything I pleased, so far as that would be concerned.

Q. These were made by you and kept in your office, were they?

A. I kept a copy in our office.

Q. You made them in duplicate, did you?

A. Yes, I did; that was for the benefit of the plant manager?

Q. Yes; and you had those there when Mr. Taylor came to your office? A. Yes.

Q. And how often did he come?

A. Once a month. [1555]

Q. And he was there one day, was he?

A. Yes.

Q. I think you said that you yourself reconciled the bank account during this period?

A. Yes, I did.

(Testimony of Mary Maud Simonson.)

Q. Mr. Taylor wasn't there when the inventory was taken, was he?

A. The plant manager took the inventory.

Q. The plant manager took the inventory; Mr. Taylor didn't circulate the accounts receivable, did he, or the accounts payable to check those?

Mr. Brody: Your Honor, I object. These don't appear to go to the identification of the exhibit, but it is cross-examination of Miss Simonson.

Mr. Le Sourd: I think that is well taken. I will reserve it. If the Court please, we will make the same objection to these records. Here we are dealing with the—they are irrelevant and immaterial. They are dealing with a separate corporation and obviously, they have nothing to do with the Government's proof concerning this corporation, and we are again wandering far afield in my opinion, your Honor, and we feel that it is improper as a part of the Defendant Forster's case to open up this case to that extent. We strongly object on that ground.

The Court: It incorporates your other objection [1556] plus the fact that this a corporation not mentioned in the Indictment, and not wholly owned by the defendant?

Mr. Le Sourd: Yes; we are going further and further into other corporations where obviously it has no bearing on the issues raised by the Government.

Mr. Brody: Your Honor——

The Court: (Interposing) This, I take it, will be connected up later.

(Testimony of Mary Maud Simonson.)

Mr. Brody: Yes, your Honor. I wish to state to the Court it is offered for the same purpose as were the other exhibits, A-34, through A-40, yesterday.

Mr. Le Sourd: And, if your Honor please, that purpose was frankly stated as not connected with any of the factual issues raised by the Government.

Mr. Brody: Your Honor, we stated yesterday extensively throughout the argument——

The Court: (Interposing) There is no objection from the Government?

Mr. Patten: No, your Honor.

The Court: Objection overruled.

Mr. Brody: A-44 is admitted, your Honor?

The Court: A-44 is admitted.

(Defendants' Exhibit No. A-44 admitted in evidence.) [1557]

Direct Examination—(continued)

Q. (By Mr. Brody): Miss Simonson, referring to certain changes or alterations which have been made in pencil on the face of the various sheets of Exhibit A-44, I will ask you to identify certain of these as to whether or not the alterations are in your hand. First, I refer you to the top page of the exhibit, containing,—A-44—which contains the months of November and December, 1946.

Calling your attention to the right-hand column marked December, 1946—and the figure—to the item marked "Inventory." Will you state what entry appears there?

Mr. Le Sourd: Just a moment, if your Honor

(Testimony of Mary Maud Simonson.)

please. We will object to that upon the ground it is immaterial and irrelevant to the case. There is no connection with any issue in this case, and I will move to strike the conclusions and observations contained in Mr. Brody's question.

The Court: I am inclined to think the objection should be sustained, Mr. Brody, at this point.

Mr. Brody: Well, your Honor, the purpose of the offer, and the purpose of this testimony is, as we stated yesterday, in our——

The Court: (Interposing) I understand. I sustain the objection. [1558]

Mr. Griffin: Well, then, may we present this right now, in the absence of the jury, then?

The Court: We will wait until recess time, please.

Q. (By Mr. Brody): Miss Simonson, are you familiar with the defendant Hans Forster?

A. Yes.

Q. And in what capacity did you become familiar with Mr. Forster?

A. I met him when he came to the plant.

Q. And on what occasions did you see Mr. Forster?

A. Well, many times he came up with Mr. Taylor but he was 'way over at the plant most of the time, although I met him and knew him.

Q. And what was Mr. Forster's connection with Finstad and Utgard, Incorporated?

A. Well, my understanding was that he was the owner of Finstad and Utgard. I don't know if that is the way to state it or not, but anyway——

(Testimony of Mary Maud Simonson.)

Q. (Interposing) And do you know whether or not he was an officer of the corporation?

A. Yes.

Q. Do you know what office he held?

A. No. [1559]

Q. Now, in the course of your duties as bookkeeper at Finstad and Utgard, did Mr. Forster ever make an entry on those books while they were under your supervision? A. Never.

Q. Did Mr. Forster ever examine or look at the books during the period in which they were under your supervision? A. No, he did not.

Q. Did Mr. Forster ever at any circumstance or occasion discuss any financial transaction of the company with you? A. Not with me.

Q. And referring to Defendants' Exhibit A-44, did anyone inform—ever inform you that you didn't need to keep your copies of that record?

Mr. Le Sourd: I will object to that as immaterial, if the Court please.

The Court: Objection overruled.

Q. (By Mr. Brody continuing): You may answer the question, Miss Simonson.

Did anyone ever tell you that you did not need to keep your record copies of the record A-44?

A. It was suggested it was not necessary to keep [1560] them.

Q. And by whom was that suggestion made?

A. Mr. Taylor.

Mr. Brody: Your Honor, that is the extent of

(Testimony of Mary Maud Simonson.)

the testimony of this witness, except insofar as we wish to examine concerning Exhibit A-44.

The Court: The question you put you wish to have answered?

Mr. Brody: That, and there will be several succeeding questions, if we may consider that matter now before going on to the next witness.

The Court: Yes, so that we will take the recess at this time.

Ladies and Gentlemen of the Jury:

Now we will take the mid-morning recess. The Court calls your attention to the admonition given on similar occasions, and asks that you heed it on this occasion.

You may now be excused.

(Whereupon, the Jury retired from the court room.)

The Court: You wish to present the argument?

Mr. Brody: Yes.

The Court: Mr. Reporter, will you back check and get the question?

You may step down, if you wish. [1561]

(Witness retired from witness stand.)

(Whereupon, the following question was read by the reporter:

“Miss Simonson, referring to certain changes or alterations which have been made in pencil on the face of the various sheets of Exhibit A-44, I will ask you to identify certain of these as to whether or not the alterations are in your hand? First, I refer you to the top page of the

(Testimony of Mary Maud Simonson.)

exhibit containing—A-44—which contains the months of November and December, 1946. Calling your attention to the right-hand column marked December, 1946, and to the figure—to the item marked ‘Inventory’. Will you state what entry appears there?”

The Court: It is obvious——

Mr. Griffin: There is no question as to form, but I thought your Honor was going to substance.

The Court: I do try to explain, but I don’t think I should, always.

Mr. Griffin: There was no question as to form. I thought you were going to substance. That is all, I am sorry.

The Court: I think, Gentlemen, you have to watch the form of these questions.

Mr. Brody: Yes, your Honor. [1562]

The Court: We will take a fifteen-minute recess.

(Whereupon, at 10:58 o’clock a.m., a recess was had in the within-entitled and numbered cause until 11:13 o’clock a.m. March 18, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

Mr. Obenour: If the Court please, before the Jury comes in, Mr. Jensen asks if he could be excused from the Court to take a trip. It is my recollection someone requested he remain in attendance.

The Court: Does anyone wish Mr. Jensen held under subpoena?

(Testimony of Mary Maud Simonson.)

Mr. Brody: No, your Honor.

The Court: Mr. Jensen may be excused, then. Miss Simonson, if you will take the stand.

(Whereupon, the witness resumed the witness stand.)

(Whereupon, the jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor. [1563]

Mr. Brody: Yes, your Honor.

The Court: You may proceed, Mr. Brody.

Q. (By Mr. Brody): Miss Simonson, will you state why you included two months on each of these reports?

A. For use of comparison. You can always do your book work better if you know from the preceding month and bring your balances up to date.

Q. Was one of the months on the report the current month?

A. Yes, the one on the right-hand side.

Q. And what was the month on the left-hand side? A. The preceding month.

Q. Now, referring, Miss Simonson, to the top page of Defendants' Exhibit A-44, marked November and December, 1946, in the right-hand column, will you state what entry appears under "Inventory"? A. The amount?

Q. Yes. A. \$22,167.47.

(Testimony of Mary Maud Simonson.)

Q. Now, is any pencilled figure——

A. (Interposing) ——I——

Q. (Continuing) ——contained in that sum?

A. I don't know whether I should have stated that or not, now that I look at it well. There is a mark, a [1564] one over the top of a two. The two is in typing, and the one is in pencil. I don't know why.

Q. Now, using the typed figures only, what is the figure under the heading "Inventory"?

A. \$22,167.47.

Q. Now, using instead of the typed figure, the pencilled figure that appears, what is the sum included under "Inventory"? A. \$12,167.47.

Q. Now, would it be possible for you by reference to your sheet for the succeeding month to check under what entry for 1946?

A. Well, the entry for November was \$23,441.32.

Q. Would it be possible by reference to your December entry and January, 1947, statement to check the inventory again?

A. Yes, it should be.

Mr. Le Sourd: If the Court please, just a moment. I am going to object to this line of testimony and move to strike all of it again on the ground that there is no relevancy or materiality appearing to the issues in this case. Here we are going into matters of inventory and other matters on the books of a separate corporation without any connection with the matters shown by the Government, and I

(Testimony of Mary Maud Simonson.)

will move to strike all [1565] of this testimony at this time.

The Court: This is in essence the same objection?

Mr. Le Sourd: It is, yes.

The Court: Made before.

Mr. Brody: Yes, your Honor, the purpose on behalf of the Defendant Forster is the same.

The Court: The Court will overrule the objection and motion.

Mr. Le Sourd: In order to avoid repeated objection on this, will the Court permit us to have a standing objection to this line of testimony in regard to this witness?

The Court: With this witness?

Mr. Le Sourd: Yes, I will repeat the request for each witness.

The Court: And that would relate to this document?

Mr. Le Sourd: Yes, that is right.

The Court: Is there any objection from counsel in that respect?

Mr. Griffin: No, your Honor.

Mr. Brody: No, because the remaining testimony with this document would be the same type of testimony.

The Court: And all the testimony is objected to?

Mr. Le Sourd: Yes.

The Court: And the document also?

Mr. Le Sourd: Yes, on the ground it is irrelevant and immaterial.

(Testimony of Mary Maud Simonson.)

The Court: The record may show that objection and it will go throughout to the examination of this witness.

Mr. Le Sourd: Thank you.

Q. (By Mr. Brody): Now, on your report for January, 1947, Miss Simonson, can you tell us what that report shows as the the inventory in the month of December, 1946? A. \$22,167.47.

Q. Now, Miss Simonson, did you place the pencilled one over the figure two in the entry for December, 1946?

A. Well, I couldn't have because the figure here for December was twenty-two thousand in the type-writing and it is twenty-two thousand in January. Therefore, if I did, I verified the fact it was twenty-two thousand.

The Court: The question is, did you?

The Witness: No, not to my knowledge. [1567]

Q. (By Mr. Brody): I now refer you in Defendants' Exhibit A-44, Miss Simonson, to the sheet for the month of December, 1947, which contains the month heading November, 1947, and December, 1947? A. Yes.

Q. Will you state what appears under the caption "Inventory," January 1st?

A. Inventory, January 1st. Well, what appears here, \$7,760.96.

Q. Now, will you tell us in what manner those figures appear, whether in pencil or in typing?

A. Well, the first two digits are in pencil, and the rest is in typing.

(Testimony of Mary Maud Simonson.)

Q. Now, can you state whether or not you put in the pencilled figures 77 which are the first two digits?

A. I wouldn't recognize it as my writing.

Q. Now, will you state what entry appears for the month of December, 1947, as accounts payable "S."

Will you first tell us what accounts payable "S" means?

A. In the Stanwood Bank, because this company did bank in two different banks. The Bank of Stanwood and the Bank of Mount Vernon.

Q. What is the entry, Miss Simonson? [1568]

A. It would be accounts payable in the check register or Bank of Stanwood.

Q. And in what amount appears under that caption?

A. Well, the one that appears is \$18,482.13.

Q. Now, will you tell us in what manner that appears, as to whether the figures are pencilled or in typing?

A. The first figure is pencilled.

Q. And in what figure is that?

A. Well, it is the ten thousand figure.

Q. Is it the digit one?

A. It is the digit one.

Q. And did you place that one there, Miss Simonson?

A. No.

Mr. Brody: I wonder if I may have permission to show to the Jury the position of that figure one, your Honor?

(Testimony of Mary Maud Simonson.)

The Court: Yes.

Mr. Brody: The witness has referred to this figure one.

(Mr. Brody holds document up before Jury.)

A Juror: We can't see.

The Court: Do you want to pass it around? All right. You can proceed with the examination.

Mr. Brody: It will require the exhibit, your Honor. After a moment, I will proceed.

(Whereupon, there was a brief pause.)

Q. (By Mr. Brody): Now, referring you again to Defendants' Exhibit A-44, Miss Simonson, I call your attention to the page which is headed November, 1948, and December, 1948.

A. Yes, sir.

Q. Can you tell us for what month that is the report?

A. Well, it is the report for December.

Q. And will you state what figure is carried as inventory for December, 1948, as shown on this report?

A. Well, the one that is here, I take that to be a zero——

Q. (Interposing) Well, read it as best you can.

A. It looks like \$10,674.10. That is the way it looks.

Mr. Keesling: I didn't get that figure.

Q. (By Mr. Brody): Would you state the figure again once more, Miss Simonson?

A. \$10,674.10.

Q. Now, by reference to the report for the suc-

(Testimony of Mary Maud Simonson.)

ceeding month of January, 1949, can you check the inventory [1570] figure for December?

A. Well, this is 1948.

This is 1948, yes.

Q. And what figure appeared as inventory in the succeeding month's report?

A. \$14,674.10.

Q. Miss Simonson, will you state in the December statement whether any pencilled figure occurs in the figure \$10,674.10?

A. The zero, the first zero.

Q. And did you place that zero there, Miss Simonson? A. No.

Q. Miss Simonson, did you send the original copies of these reports to Mr. Taylor?

A. He usually took them.

Q. And are these——

A. (Interposing) You know, because I just gave them to him when he came to make his report. That is, when he came to do his work on the books.

Q. And Defendants' Exhibit A-44, are those original copies; will you examine them to determine that?

A. These should be the original copies. They look to me like original typing all over them.

Your second page on a typewriter does not [1571] look like this. I would say they were all original.

Mr. Brody: You may inquire.

Mr. Patten: No questions.

(Testimony of Mary Maud Simonson.)

Cross Examination

Q. (By Mr. LeSourd): Are these the set that you kept in your office, or are these the set that went?

A. Those are the ones, I take it, that went to Mr. Taylor, because they are the originals. We kept the duplicate in the office.

Q. And you did keep the duplicate in your office? A. Yes, sir.

Q. And Mr. Taylor had a set also?

A. That is right, we kept a duplicate for the manager of the Creamery.

Q. You say that Mr. Taylor advised you it wasn't necessary for you to keep a set?

A. That is right.

Q. Because he had a set himself?

A. That is right.

Q. So that there was no necessity for it?

A. That is right.

Q. Did you ever hear of the Skagit County Dairymen's Association?

A. I certainly did. [1572]

Q. And they did a great deal of business with this company, didn't they?

A. Considerable.

Q. And did you ever hear of amounts that were payable by Finstad and Utgard to that company, to the bonus, extra amounts?

Mr. Brody: I will object, your Honor, if the amount——

Mr. Le Sourd: It goes to the testimony here.

(Testimony of Mary Maud Simonson.)

The Court: You may proceed.

A. I don't quite understand your question.

Q. (By Mr. LeSourd): Wasn't there additional amounts, sometimes called "bonuses," payable to Skagit County Dairymen's Association that were paid after the end of each year?

A. I still don't get the bonus that we paid. In that company, they were paid to the shippers.

Q. Paid to the shippers?

A. Yes, the shippers got a bonus during the year, and those were made out as separate papers.

Q. As separate papers. Does the Skagit County Dairymen's Association represent the shippers?

A. Why, no. Maybe you don't know anything about milk.

Q. I certainly don't. I am just trying to find out. [1573] I am trying to find out, but there were bonuses paid to the shippers of milk?

A. The shippers, yes.

Q. And those bonuses were paid after the end of the year?

A. At the end of the year, yes, after they were decided upon by the milk companies.

Q. And those bonuses were, in substance, amounts weren't they, depending on how much the farmer had shipped?

A. They were based entirely on butter fat.

Q. But the total payable by Finstad and Utgard might exceed ten thousand dollars a year, is that correct?

A. It would be hard for me to remember how

(Testimony of Mary Maud Simonson.)

much. We paid them differently in two counties, Skagit and Snohomish, and we had to figure hundredweight in one county and butterfat in another. And I don't think you would remember those figures unless you had them in front of you.

Q. I certainly would not. A. No.

Q. Then, at the end of the year, whatever bonuses were properly to be payable to these farmers would have to be estimated, wouldn't they, to enter into accounts payable? [1574]

A. Not estimated, they were figured accurately.

Q. And you paid them? A. Yes.

Q. But prior to the time you paid them, when the company had received milk from the shippers, you had an undetermined liability for bonus, until it was figured and paid?

A. I suppose you would say it was an undetermined liability.

Q. Yes; handing you Defendants' Exhibit No. A-44, on the first page you testified to a mark.

A. Yes.

Q. In front of a figure \$2,167.47. Do you know who put the mark on there?

A. I could not tell you. I know I didn't.

Q. Yes; I understand that is your testimony. And, on December, 1947, you testified to accounts payable. A. This one, yes.

Q. Yes, with a one in pencil in front of that item. A. Yes.

Q. Do you know who put that there?

A. No, I do not.

(Testimony of Mary Maud Simonson.)

Q. The effect of that one would be to increase the [1575] accounts payable by ten thousand dollars at the end of the year? A. Yes.

Q. Do you know whether or not that was attributable to the bonus owed?

A. No, it couldn't be at that time.

Q. It could not be at that time?

A. No, it couldn't be.

Q. Weren't these bonuses paid after the end of the year?

A. January, if we could get them made up, and we usually did.

Q. And they reflected shipments of milk during the preceding fall, didn't it? A. Yes.

Q. Yes, of course; on December, 1947, in Defendants' Exhibit A-44, you testified to certain——

A. (Interposing) Yes.

Q. (Continuing) ——pencil figures opposite inventory? A. Yes.

Q. Do you know who put those on?

A. No, I do not.

Q. Do you know Mr. Egeness's writing?

A. I recognized his writing in one place here, but [1576] that doesn't look like it.

Q. You don't think that is his writing?

A. And, anyway, I don't think you could recognize anybody's seven very well. That is a poor figure to go by.

Q. It may be.

A. It is. This is December, 1948.

(Testimony of Mary Maud Simonson.)

Q. Yes, in December, 1948, do you find under "Inventory" a zero in the second digit?

A. Yes.

Q. Written in pencil? A. Yes.

Q. Do you know who wrote that? A. No.

Q. Do you, of your knowledge, know what the reasons were, if any, for these adjustments that were in pencil on these sheets?

A. I wouldn't have any idea, because whenever you have a sheet like this, if you are going to bring forward this December to the next page, if I had made any error in actual computation, it would have been corrected in this next one, naturally. Wouldn't you do it that way?

Q. Of course; but to the adjustments, other than an error in computation, you don't know about?

A. No. [1577]

Q. You did find various figures of Mr. Egeness on that figure, didn't you?

A. I think I saw one that I thought I recognized as his. I think I can tell you what it was.

He marked in the inventory when I perhaps didn't have time.

Q. He marked it in?

A. Yes, because I kept my inventory entirely itemized in a separate book. He could have taken my total and marked it in. I had all the work to do in the office, remember.

Q. And that marked in inventory by Mr. Egeness was in pencil? A. Yes, it was.

Mr. Le Sourd: That is all.

(Testimony of Mary Maud Simonson.)

Mr. Keesling: I have no questions.

Mr. Patten: No further questions.

Redirect Examination

Q. (By Mr. Brody): Miss Simonson, the markings in inventory that you testified was made by Mr. Egeness——

A. (Interposing) I thought that was the one I saw.

Q. Can you tell us where that was? [1578]

A. Let's see if I can find it. Yes, right here.

Q. And what month is that, please?

A. March, 1947. That looks like his writing, as I remember it.

Q. And that is in one of the months concerning which I asked you questions, was it, Miss Simonson?

A. No, no.

Q. Now, concerning the shippers' bonus, about which Mr. LeSourd asked you, can you ever recall having a shippers' bonus in the precise amount of \$10,000?

A. Well, a shippers' bonus would never be in an exact amount of round dollars, ten thousand dollars, or anything like that. You are computing that bonus on milk, and I never in my life saw a statement figuring milk that didn't end—it very seldom ended in even dollars, and almost always in dollars and cents, but it never would have ended in any amount of ten thousand or fifteen thousand or twenty thousand dollars.

Mr. Brody: I have no further questions.

(Testimony of Mary Maud Simonson.)

The Court: Any questions?

Mr. Patten: No, your Honor.

Mr. Le Sourd: Yes, I have another question.

Recross Examination

Q. (By Mr. Le Sourd): Miss Simonson, [1579] you testified that those shippers' bonuses were paid in January, didn't you?

A. Usually; there could be an exception.

Q. Yes, but usually? A. Usually.

Q. If you were to attempt to put the amount of shippers' bonus prior to calculation of those amounts it would be necessary to take simply an estimated round figure, wouldn't it?

A. No, on the bonuses that I ever did ahead of time, I simply took name of the shipper, because he made a request and needed the money, and made it out, and I made it out just as if I paid it to him.

Q. Of course, you did, when you were making out the figure to send him a check; but now there were many shippers, weren't there?

A. Yes, but they each had to have a check.

Q. They each had to have a check, and in January, you computed what check they should get, didn't you? A. Yes.

Q. All right; but prior to making any computation and without making a computation individually for each of these shippers——

A. (Interposing) I get what you mean.

Q. (Continuing) ——you were to attempt to arrive at [1580] some amount representing the obli-

(Testimony of Mary Maud Simonson.)

gation owed these shippers in this bonus——

A. (Interposing) Yes.

Q. (Continuing) ——without making a detailed computation, you would have to take a round figure, wouldn't you?

A. I wouldn't know, because I never did the books any further than I told you.

Q. So that in the figures for your books accounts payable at the end of the year, there was no estimate made in your figure for the liability to these shippers for milk, was there? A. No.

Mr. Le Sourd: That is all.

Mr. Patten: May I ask one question?

The Witness: Yes, sir.

The Court: On this same matter?

Mr. Patten: Yes.

Recross Examination

Q. (By Mr. Patten): When were the shippers' bonuses computed, to the best of your knowledge?

A. In January, as a general rule.

Q. Can you place it any closer than that?

A. Just about as soon as—we paid the regular milk [1581] anytime from the first to the fifth and as soon as we could get around to it after that, we computed the bonuses.

Q. Would you say on the 15th?

A. Yes, before the 15th, I would say I remember, as near as we could.

Q. And they were paid just as soon as they were computed?

(Testimony of Mary Maud Simonson.)

A. Sometimes they were held up because the decision wasn't made as to how much the bonus would be. I have known them not to be paid in January. You see, these were decided by the Dairy Associations usually and based on their figures. It is very hard to say when these bonuses would have always come in.

Mr. Patten: Thank you, very much.

Mr. Keesling: No questions.

The Court: That is all, Miss Simonson.

The Witness: Thank you.

• (Witness excused.)

Mr. Brody: Mr. Gorans. [1582]

GERALD E. GORANS

upon being called as a witness for and on behalf of the Defendant Forster, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: I want your full name, and the spelling of your name, please.

The Witness: Gerald E. Gorans, G-e-r-a-l-d G-o-r-a-n-s (spelling).

Q. (By Mr. Brody): Will you state your name, please? A. Gerald E. Gorans.

Q. What is your address, Mr. Gorans?

A. My residence is at 6057 38th Avenue Northeast, in Seattle.

Q. And your business address?

A. 1411 Fourth Avenue Building, in Seattle.

(Testimony of Gerald E. Gorans.)

Q. And what is your profession, Mr. Gorans?

A. I am employed by the firm of Touche, Niven, Bailey & Smart as an accountant.

Q. Now, will you state fully what your academic education has been?

A. I started in college at Lower Columbia Junior College in Longview in October, 1941, and graduated from there in June, 1943, and entered the Navy on July 1, 1943, [1583] and I attended college at Whitman in the Navy Program for two semesters. From there, I went through Midshipmen's School in Chicago, and, after getting out of the Navy in 1945, I continued my education at the University of Washington, graduating in March, 1947.

Q. What degree, if any, did you receive from the University?

A. Bachelor of Arts in Economics and Business, with a major in Accounting.

Q. And what employment did you take after your graduation from College?

A. I went to work for Touche, Niven, Bailey & Smart immediately upon graduation.

Q. In what capacity?

A. As a staff accountant.

Q. And have you been continuously employed by Touche, Niven, Bailey & Smart up to the present time?

A. Yes, I have.

Q. Are you a certified public accountant?

A. Yes.

Q. In what state? A. Washington.

Q. And when did you receive your certificate?

(Testimony of Gerald E. Gorans.)

A. In February, 1949.

Q. Have you ever had any teaching experience in [1584] accounting?

A. I was undergraduate teaching assistant at the University of Washington, the last two quarters that I attended school there.

Q. What is your present position with Touche, Niven, Bailey & Smart? A. Supervisor.

Q. How many supervisors are on the staff of Touche, Niven, Bailey & Smart?

A. There are two.

Q. And what are the duties of a supervisor?

A. Well, they consist of many things, but basically it is the supervision of audits and other work that we do, and supervising the men that are working on the particular jobs, and reviewing the work when it is completed, and determining that it has been done accurately and it is delivered in time so that it is of value to the client to meet various deadlines.

Mr. Keesling: We can't hear.

The Court: Mr. Gorans, you will have to speak up.

Q. (By Mr. Brody): You will have to speak up. How many accountants on the staff of Touche, Niven, Bailey & Smart and under the direction of the two [1585] supervisors?

A. During the winter months, we will have somewhere around 21 or 22 men.

Q. Now, what was the first contact you had with this case?

A. As I recall the first contact I had was some-

(Testimony of Gerald E. Gorans.)

time, I think it was on the 28th of April, 1950, when I was furnished a copy of this memorandum that Mr. Tremper had here yesterday, which he gave me to read.

Q. What was the subject of that memorandum, Mr. Gorans?

A. The subject of it was just the arrangements that had been made with Mr. Forster relative to an examination of his accounting records for the various companies in which he had an ownership.

Q. And after reading that memorandum, did you make a trip to Issaquah?

A. The following Monday, which was made first, we made a trip to Issaquah.

Q. And who accompanied you to Issaquah?

A. Mr. Tremper and Mr. Alkire.

Q. And what did you do at Issaquah?

A. We met with Mr. Forster, Mr. Erickson, and discussed principally the procedures that we were going to follow, and we also made inquiries to find out what [1586] records were kept, where the records were.

Q. Will you state what discussions, if any, there was concerning the general ledger; of the Hans Forster general ledger of the various Hans Forster enterprises?

Mr. Patten: That would appear to be self-serving.

The Court: May I have the question again, Mr. Reporter?

(Testimony of Gerald E. Gorans.)

(Whereupon, the preceding question was read by the reporter.)

Mr. Brody: I will rephrase the question, your Honor.

Q. (By Mr. Brody): Did Touche, Niven, Bailey & Smart, subsequent to this visit of May 1, 1950, take any responsibility for the general ledgers of the Hans Forster enterprises?

Mr. Patten: Objected to as leading.

Mr. Cox: Objected to as irrevelant and immaterial, relating to a period after the Indictment. We also join in the objection as leading.

Mr. Brody: Your Honor, I only seek to show by this testimony the situation that the accountants found when they met there first at Issaquah, within the spirit of your ruling yesterday. I don't intend to go further. [1587]

The Court: Outside the period of the Indictment, that is?

Mr. Brody: That is correct.

The Court: I think the question may be answered to carry forward or indicate what proceedings were taken.

The Witness: May I have the question again?

Mr. Brody: Will you repeat the question, please?

Mr. Patten: I still think my objection to the form of the question——

The Court (Interposing): Well, the fact that it is leading in character, I think, might be technically proper, but I believe it facilitates the testimony here in this case and that will be overruled.

(Testimony of Gerald E. Gorans.)

Mr. Reporter, read the question.

(Whereupon, the preceding question was read by the reporter.)

A. We took over the general ledger for all the companies.

Q. (By Mr. Brody): Prior to doing that, did you make any determination of whether there were any personnel of Mr. Forster who were capable of doing that job?

Mr. Patten: Your Honor, it is very leading.

The Court: Objection sustained.

Mr. Brody: Your Honor, this is precisely to the point of what did the accountants find at the time they made their initial visit—whether or not there was such personnel available. I don't intend to go any further. I only wish to show why they took the position.

The Court: Is it important to show what the conditions were so far as this condition was concerned?

Mr. Brody: We believe that that is precisely the condition that prevailed.

The Court: What his view of it is, is not an issue, is it?

Mr. Brody: Well, I will put the question in this manner, your Honor.

Q. (By Mr. Brody continuing): On your first visit to Issaquah, who was in charge of the general ledger?

A. Nobody, so far as we knew. They had been

(Testimony of Gerald E. Gorans.)

delivered there, we were informed and given to Mr. Erickson.

Mr. Cox: We move to strike the last portion of the answer.

The Court: That is hearsay.

Mr. Brody: Yes, your Honor. [1589]

The Court: The hearsay statement may be stricken.

Q. (By Mr. Brody): Now, will you state what work subsequent to this first conference of Touche, Niven, undertook to do?

A. First of all, we found that no one could keep the general ledger, so we took over that responsibility and carrying forward with our agreement that we would make an examination of the accounting information, that was kept for these companies, and made an examination of the balance sheet at May 31, 1950. We had to post the records for the month of April. We arrived too late to make an examination of the accounting records for the end of April, so it was postponed until May 31st and prior to that time, there was no one to post the records for the month of April, so during the month of May, we did that work.

Q. And did you eventually prepare an audit report based on the date May 31, 1950?

A. Yes.

Q. Now, what was the first time that you met the Revenue Agent, Mr. Marx?

A. It was either the latter part of August, or the first part of September, 1950.

(Testimony of Gerald E. Gorans.)

Q. Will you describe the circumstances under which [1590] you met him?

A. We called at our office to review the working papers we had prepared in connection with our examination.

Q. Will you state to what extent he made such a review?

A. Well, he had the papers—all of the working papers—to look at.

I can't very well state to what extent he actually went into them. That is something he could only advise.

Q. Was the examination made in your office?

A. Yes.

Q. And were all your working papers made available to Mr. Marx?

A. They were.

Q. And during this period from May 1, 1950, until the time that Mr. Marx made his examination of your working papers, approximately what portion of your time was spent on this work?

A. I spent practically all my time on this work.

Q. Well, when did you issue your reports on the work that you have described?

A. I believe that they were actually delivered sometime in the latter part of November, 1950.

Q. Will you state what those reports were; how many reports, and what the nature of the reports was? [1591]

A. There were two reports. One of them covering the status of Mr. Forster's net worth, and the

(Testimony of Gerald E. Gorans.)

other covered the work that we had done in our examination of the various companies in which Mr. Forster had an interest and set forth the balance sheet and profit and loss statement for Alpine Dairy and Issaquah Creamery Company, and included schedules of adjustments we had to make relative to prior years for all the other companies.

Q. Now, did you at any time during your work on this case work under the direction of Mr. Marx in preparing accounting schedules relating to this case?

A. Well, I was informed that I was working directly under his supervision, which started about the first of November, 1950.

Q. And will you describe the work which you did in this period?

A. Assisted Mr. Marx in any—in helping him to develop any information that he wanted.

Q. Now, can you state in more detail what type of information you were developing, what type of work you did with Mr. Marx?

A. Well, some of the specific things we did were—was to prepare depreciation schedules for Alpine Dairy and Issaquah Creamery Company, starting in the year 1940, and carrying that forward through 1949. [1592]

We found the bank statements and so forth of the Alpine Ice Cream Company—we made up a summary report covering everything, covering the operations of that period of that company from

(Testimony of Gerald E. Gorans.)

May, 1944, through April 30, 1949, based on the information that we could find at that time.

Q. And was anyone else from the office of Touche, Niven working with you at this time with Mr. Marx?

A. There was one other person that worked full time with me and at various other times, there was other people that assisted also.

Q. And who directed you to work as to precisely what schedules you would prepare, or what information you would furnish?

A. Usually, Mr. Marx advised us what he wanted. He didn't always state the exact form he wanted it in, but he pretty well directed what information he would desire and we proceeded to try to get it to him in finished form.

Q. And to whom was the finished work turned over?

A. Generally, it was turned over to Mr. Marx when it was completed.

Q. How long did this arrangement continue?

A. From the middle of November to the first of December, 1950. [1593]

Q. Where was this work performed?

A. We rented a separate office in the building in which we were located, and we did most of this work there.

Q. Were any books or records available—of the Hans Forster enterprises available in that office?

A. We brought all the records we thought we would need into that office.

(Testimony of Gerald E. Gorans.)

Q. And did Mr. Marx during that period have full access to that office?

A. Yes, he did.

Q. Now, by the way, Mr. Gorans, in this case were you given a subpoena by the Government?

A. Yes.

Q. But you were not called to testify by the Government?

A. No.

Q. Now, following the completion of the work you did with Mr. Marx, did you work on any other special reports that were submitted either to Mr. Marx or to Mr. Eppler?

A. Yes.

Q. Will you state what those reports were?

A. One report was a study that we made of the accounts payable and the inventory sheets of the Renton [1594] Ice and Ice Cream Company, and the other one concerned the pricing of Milk between Alpine and Issaquah Creamery Company during the years 1948 and 1949.

Q. And were those formal accounting reports submitted by your firm?

A. Yes, they were.

Q. I wonder if you could state, Mr. Gorans, approximately how many men on the staff of Touche, Niven, Bailey & Smart worked on the audit of Hans Forster enterprises and other work associated with this case during the year 1950?

Mr. Moriarty: Objected to as immaterial.

The Court: Objection overruled.

A. I checked our records, and there was 19 different people in our employ that at one time or

(Testimony of Gerald E. Gorans.)

another worked on Mr. Forster's business and during 1950 when we were making our examination, I think the most we had at any one time was ten or twelve people.

Q. (By Mr. Brody): Now, in the course of your examination, Mr. Gorans, did you come into contact with Mr. Hans Forster?

A. Yes.

Q. Will you describe at what times and in what manner?

A. I delivered the reports that we prepared, the [1595] monthly financial reports that we prepared, to him, and I was in contact with him almost daily, in attempting to find out the nature of the various transactions that we came in contact with in making our examination and trying to develop his net worth.

Q. Now, did you at any time discuss these monthly financial statements with Mr. Forster?

A. Yes.

Q. And will you state the nature of this discussion?

Mr. Moriarty: Objected to as hearsay.

The Court: What purpose is this? I am inclined to sustain the objection.

Mr. Brody: Our purpose, your Honor, is to show the extent of the knowledge of Mr. Forster of accounting matters.

Mr. Moriarty: This man is not a psychiatrist, or psychologist.

Mr. Brody: He is an expert accountant.

(Testimony of Gerald E. Gorans.)

Mr. Moriarty: That doesn't qualify him to read a man's mind.

The Court: The Court will sustain the objection.

Q. (By Mr. Brody): Can you state, as a result of your contact with Mr. Forster, your opinion of his knowledge of bookkeeping [1596] and accounting procedure.

Mr. Moriarty: Objected to.

Mr. Patten: Objected to on the same grounds.

The Court: Objection sustained.

Mr. Brody: Your Honor, this man is an expert witness, and he had frequent contacts, as shown by the testimony, with Mr. Forster.

He is objectively able, as a result of his contact, to determine if Mr. Forster had any degree of accounting skill or knowledge. It is something he can tell without reference to the state of mind of Mr. Forster.

The Court: I do not believe it is a matter for expert testimony.

Mr. Patten: It is a matter for the Jury. He is not qualified to state what other people know.

The Court: The Court will make the observations.

Q. (By Mr. Brody): Now, in your work with the Hans Forster enterprises, will you state whether or not you found it necessary to revise the method of handling accounts payable? A. Yes.

Q. Will you state the method which you found in [1597] existence at the time of your first audit?

(Testimony of Gerald E. Gorans.)

Mr. Moriarty: Objected to as immaterial, and beyond the period of the Indictment.

Mr. Brody: Your Honor, I believe this is quite definitely within the scope of the ruling yesterday.

The Court: You are going into the condition?

Mr. Brody: The condition he found.

Mr. Moriarty: That question has been answered. He said he had to revise it. I think that completes it.

Mr. Brody: My purpose is to show what did exist at the time he went out there.

The Court: The question is rather general, isn't it?

Mr. Brody: I restricted it to the method of handling accounts payable.

The Court: Accounts payable.

Mr. Brody: That is what was the method of handling it as of the time of his first examination.

The Court: Of course, the time we are concerned with is the period under the Indictment.

Mr. Brody: That is right, your Honor.

The Court: If it is the same, it would—if the method were the same at the time he saw them, as the time covered by the Indictment, I think it would be admissible, [1598] but I don't know whether he knows.

Mr. Brody: I can ask.

Q. (By Mr. Brody): Mr. Gorans, from your examination of the books and records of the Hans Forster enterprises, were you able to determine that there was any change in the method of han-

(Testimony of Gerald E. Gorans.)

ding accounts payable from March 15, 1950 to May 1, 1950?

Mr. Moriarty: He already testified that there was a change in April, that April had no general ledger entries. Object to the form of the question.

The Court: Objection sustained.

Mr. Brody: Well, your Honor, in that respect, the only testimony that I can recall has been testimony concerning the making of the entries in the general ledger for the month of April, 1950, which occurred, naturally, after the close of the month of April, 1950—that is, after May 1, 1950. There has been no testimony that I can recall that there was any other change in the accounting items. It seems to me a proper question.

Mr. Moriarty: I think counsel's recollection is inaccurate. The witness testified in April he arranged to return, and couldn't close the books until after May 31st. That is my recollection of the testimony. [1599]

The Court: Aren't we getting into the condition of the books during the period covered by the Indictment?

Mr. Brody: That is the purpose of this question.

The Court: Yes, why don't we go into that directly, then?

Mr. Brody: Well, this witness made his first examination, on May 1, 1950. Now, if I ask him a question as to the Indictment period, an objection will be made that he made no examination prior to May, 1950.

(Testimony of Gerald E. Gorans.)

The Court: He said eventually he examined the books.

Mr. Brody: He examined them for the whole Indictment period, that is correct.

I will put the question in this manner:

Q. (By Mr. Brody): What was the method during the years 1945 through 1949 of handling accounts payable at Issaquah Creamery and Alpine Dairy?

Mr. Moriarty: I think he should be qualified that he did examine these books and the accounts payable from that period to the end of that period.

Mr. Brody: Well, the testimony is he made a complete audit and submitted audit reports.

Mr. Moriarty: But ten or twelve people were on [1600] this investigation according to his own investigation.

The Court: You might ask him the question if he did make the audit.

Q. (By Mr. Brody continuing): Did you supervise the work that was done on the Forster enterprises? A. Yes, I did.

Q. Did you review all of the work that was done by the various accountants who participated in this work? A. Yes, I did.

Q. Did you review the final report submitted by your firm? A. Yes.

Q. Will you state in detail what the audit report as of May 31, 1950, contained?

Mr. Moriarty: Objected to on the qualification, if your Honor please. He is going to discuss ac-

(Testimony of Gerald E. Gorans.)

counts payable, and he should have inspected them himself personally and not reviewed some report.

Mr. Brody: I want him to state what is in the report, first, so that there will be no question what the report was. I will then go further as to specific matters which I intend to examine on.

The Court: I am not clear, myself, Mr. Brody, why it is material what was contained in the report of May, 1950. Aren't we concerned about what the circumstances were [1601] beginning January, 1945, until—so far as books are concerned?

Mr. Brody: Testimony will show it was necessary to examine prior years and make appropriate adjustments to make an audit as of May, 1950. That audit involved the Indictment.

That is why I would like to ask what work was necessary to be done. That will inform us of the scope of this examination.

The Court: Well, I still—it is quite obvious to us by this time from what the testimony is that it was a very involved examination.

Mr. Brody: Extensive, yes, sir.

The Court: And I don't think we need more testimony on that. I think what we want to get down to is the condition of the books that you think is material.

Q. (By Mr. Brody): Did you have an opportunity to examine the method of handling Accounts Payable in Alpine Dairy and Issaquah Creamery from the years 1945 to 1949?

(Testimony of Gerald E. Gorans.)

Mr. Patten: Objection, not based upon records in evidence.

The Court: Did you examine all the records?

The Witness: Yes, I examined the records that are in evidence. [1602]

Mr. Brody: They are in evidence, your Honor, journals and ledgers.

Mr. Patten: Will he identify the records by exhibit numbers upon which his exhibit is based?

The Court: I suggest that that be done on cross-examination, if you wish to go into it.

Q. (By Mr. Brody): And what was the method of handling accounts payable at Alpine Dairy and Issaquah Creamery in the years 1945 through 1949?

A. They were merely recorded on the basis of checks issued, subsequent to the month end in the disbursement book that we have here in evidence. There was no particular attempt to reconcile at any time the accounts payable, or to determine whether the accounts actually paid agreed with the amounts recorded.

Q. Now, did you examine the method of handling accounts receivable at Alpine Dairy and Issaquah Creamery in the years 1945 through 1949?

A. Yes.

Q. And will you describe the system that existed in those businesses for those years?

A. Without going into a great deal of detail about the Issaquah Creamery Company, all sales that were made in the normal course of events were recorded on accounts [1603] receivable ledger

(Testimony of Gerald E. Gorans.)

cards, and when collections made properly recorded.

Miscellaneous sales, non-reoccurring sales, to various customers, were generally not recorded on a ledger card, and a slip of paper was used as a means that the receivable was in existence.

Q. I wonder if you could distinguish for us in detail the difference between a sale in the ordinary course of business or a miscellaneous or non-reoccurring sale?

A. I was talking about a sale in the ordinary course of business. That covers the sale of products that sell daily, and to a customer that is served, possibly, on a daily, weekly or monthly basis.

Miscellaneous sales would cover something where an occasional person comes in and buys something once, or maybe something once in six months, or maybe once in a lifetime, and the other thing covers items that have been purchased maybe in supplies, and they find out they don't need them, or sell them, or it may be junk that is sold. It comes under the category of a miscellaneous sale.

Q. And, in the course of your work, did you find it necessary to revise that system of handling the accounts receivable of Issaquah Creamery and Alpine Dairy? [1604]

A. Yes.

Mr. Moriarty: Objected to as immaterial.

The Court: Objection sustained.

Mr. Brody: As I understand yesterday's ruling, it was that the conditions which existed during the Indictment period might be shown, and the fact that

(Testimony of Gerald E. Gorans.)

they were changed, the extent and method used to change them, would be material, and we were not to review the further accounting work done by Touche, Niven, Bailey & Smart. I do not intend to pursue it further, but to put this one question whether or not it was changed.

The Court: Is that the substance of this question, just that it was changed?

Mr. Brody: That is all, your Honor.

Mr. Moriarty: I object, if your Honor please. After the matter is under investigation, what they did then is self-serving.

Mr. Brody: I offer the question on another basis, that this witness is an expert.

Mr. Moriarty: It doesn't matter whether he was an expert or an individual.

Mr. Brody: That he found a situation that—

The Court: (Interposing) Objection being made, I don't see that it is material. I will sustain the objection. [1605]

Q. (By Mr. Brody): Did you examine—have an opportunity to examine—the method of handling miscellaneous income at Alpine Dairy and Issaquah Creamery, during the years 1945 through 1949?

A. Yes.

Q. Well, will you describe what that system was?

A. Miscellaneous income was recorded by Mrs. Wilcox, but it was never included in her report to the extent that it was picked up as miscellaneous income and posted in the general ledger.

(Testimony of Gerald E. Gorans.)

Q. And who were the personnel in the Issaquah Creamery Company office on May 1, 1950?

Mr. Moriarty: Objected to as immaterial.

The Court: Objection sustained.

Mr. Brody: I only want to establish, your Honor, that this witness—well, I will ask Mr. Gorans.

Q. (By Mr. Brody): If you can state whether you worked with any employees of the Issaquah Creamery Company office who were employed in any of the years 1945 through 1949?

Mr. Moriarty: Objected to as being based on hearsay. His first visit there was in 1950, and any information that he received that he can answer—

Mr. Brody: (Interposing) This witness examined [1606] books and records including payroll records of the company, and would be able to determine when any employee came into the employ of the company and for how long a period.

The Court: Assuming he might know it from reading books of account, I don't know what the purpose of it is at all, Mr. Brody. It would appear to be immaterial, and the Court will sustain objection.

Q. (By Mr. Brody): Now, from your examination of the books and records of the Alpine Dairy and Issaquah Creamery in the years 1945 through 1949, were you able to determine what degree of coordination there was between those two businesses? A. Well, between the two—

Mr. Moriarty: That can be answered yes or no.

Q. (Continuing) Yes.

(Testimony of Gerald E. Gorans.)

Q. (By Mr. Brody): You can answer "yes" or "no", Mr. Gorans. A. Yes.

Q. And will you state what that degree of co-ordination was?

A. There was practically no coordination between them, particularly between the office of Alpine Dairy where the work was done, and Issaquah and where the work [1607] was done at Seattle here.

Mr. Keesling: We can't hear.

The Court: They can't hear you. Do you want the reporter to read the question?

Mr. Keesling: Just the answer.

The Court: Mr. Reporter, will you read the answer, please?

(Whereupon, preceding answer was read by the reporter.)

Q. (By Mr. Brody): And can you, by reference to specific incidents give us more detail on that answer?

A. In reviewing the records, we found where checks had been issued to various people, either as a loan, or to buy equipment with which had been recorded in Issaquah Creamery Company maybe as an account receivable, or as a purchase while down at Alpine Dairy they picked it up as a receivable and there was no coordination at either end, and items shown as receivable at Alpine were the same amounts that were actually paid out in cash out at Issaquah.

Q. Now, in the course of your audit and exam-

(Testimony of Gerald E. Gorans.)

ination, Mr. Gorans, did you examine the books and records of Alpine Dairy? A. Yes.

Q. And did you find any indication that the [1608] general ledger balances had ever been reconciled? A. No.

Q. Now, will you state to the jury precisely what a reconciliation is of accounts with a ledger?

A. The general ledger contains a balance for accounts receivable, and it shows in the same ledger as one figure, whereas there could be up into the thousands of accounts which actually—that one figure represents, and in reconciling the general ledger, you take a trial balance of earnings, a balance of all these individual accounts, and totalling the accounts and compare it with the amount that appears in the general ledger.

The general ledger is supposed to represent the amount of those accounts.

The Court: A little louder, Mr. Gorans, as you go along.

Did you finish?

The Witness: Yes.

Q. (By Mr. Brody): Is the reconciliation of accounts with a general ledger a normal accounting function? A. Yes, it is.

Q. What books, papers, documents or records are necessary to affect such a reconciliation?

A. It is necessary to use the general ledger and [1609] the detail information. You can't do it using only one or the other. You have got to have both of them.

(Testimony of Gerald E. Gorans.)

Q. Now, in the course of your examination——

The Court: (Interposing) Can you interrupt conveniently?

Mr. Brody: Yes, it would be a profitable time, your Honor, because we are going into detailed testimony.

The Court: Ladies and Gentlemen of the Jury:

We will now take the noonday recess. The Court calls your attention to the admonition given on similar occasions and asks that you heed it on this occasion. You may now be excused until 1:45.

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, at 12:16 o'clock, p.m. a recess was had in the within-entitled and numbered cause until 1:45 o'clock p.m. March 18, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit):

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all [1610] defendants are present in the courtroom.

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

Mr. Brody: Yes, your Honor.

The Court: You may proceed.

Q. (By Mr. Brody): Mr. Gorans, were you able to determine in your investigation the correctness,

(Testimony of Gerald E. Gorans.)

whether or not the accounting books and records of the Hans Forster enterprises during the years 1945 through 1949 were correct and accurate?

A. No, we were not able to determine that.

Q. And what,—did you—what did your investigation and examination reveal concerning the correctness and accuracy of the books and records of the Hans Forster enterprises during those years?

A. Well, we found that the general ledgers were not complete, there was inadequate posting references, and sources of many figures recorded in the general ledger could not be identified as to source, we found that there was a general lack of bank reconciliations and reconciliations of accounts receivable and accounts payable and other items.

In making our examination, we——

Mr. Moriarty: (Interposing) May I inquire [1611] if the witness is reading from notes?

The Court: Are you reading from notes?

The Witness: Yes.

Mr. Moriarty: May I make further inquiry?

The Court: You may.

Mr. Moriarty: Were these notes made for the purpose of this case?

The Witness: Yes, they were.

Mr. Moriarty: Then I object to his reference to them.

Mr. Brody: May I ask further questions, your Honor?

The Court: You may.

(Testimony of Gerald E. Gorans.)

Q. (By Mr. Brody): Is that an accounting report from which you were reading?

A. Yes, it is.

Q. Was it a report to be submitted to the Bureau of Internal Revenue for their use in this case?

A. It was.

Q. And does it accurately reflect your findings on examinations of the record and books of Hans Forster?

A. It does.

Q. And are you using it at the present time to refresh your recollection as to the examination which you [1612] made?

A. I did.

Mr. Moriarty: May I inquire further?

The Court: You may.

Mr. Moriarty: Is this document that you are now reading from prepared for your testimony in this case?

The Witness: No, it was not prepared for my testimony.

Mr. Moriarty: What is the document you are reading from?

The Witness: It is a report on the special investigation of certain companies in which Hans Forster has an interest issued by——

Mr. Moriarty: (Interposing) And what is the date of it?

The Witness: The date of the work was May 31, 1950. The report——

Mr. Moriarty: (Interposing) The date that it was prepared?

(Testimony of Gerald E. Gorans.)

The Witness: The report was actually written sometime after August 29, 1950.

Mr. Moriarty: Is that a certified report?

The Witness: It is a report signed by Touche, Niven, Bailey and Smart.

Mr. Moriarty: Certified to be correct? [1613]

The Witness: Certified to be correct, except that on the basis of what we found in the records, we could not certify that the financial statements were correct.

Mr. Brody: Would you like to have it marked, Mr. Moriarty?

Mr. Moriarty: Yes, I would like to have it marked, and I would like to pursue my examination a little further, if you Honor please.

The Court: On the report.

Mr. Moriarty: On the report.

Did you know at the time that you prepared this report that you were to be a witness?

The Witness: No, I did not know I was to be a witness.

Mr. Moriarty: What was the date of the report?

The Witness: The report is actually dated August 29, 1950.

The Clerk: Plaintiff's Exhibit No. 281 marked for identification.

(Plaintiff's Exhibit No. 281 marked for identification.)

Mr. Moriarty: Are all of the documents in evidence upon which you now base your report?

(Testimony of Gerald E. Gorans.)

The Witness: No, not all the documents are in evidence. Many of them are, though. [1614]

Mr. Moriarty: All the documents are not?

The Witness: This report in effect covers an examination of all the records that were available for all the companies in which Mr. Forster had an interest.

Mr. Moriarty: Then this extends further than the period covered by the Indictment?

The Witness: It covers the extent of the work that we did, whether it goes back beyond the period that the Indictment started and extends into 1950.

Mr. Moriarty: Then there are documents that are not in evidence upon which this report is based?

The Witness: Well, the report is based on the work that we did. Now, it represents and covers what we did in documents of these companies, and some of the documents of these companies are not in evidence.

Mr. Cox: What was the number of that exhibit?

The Clerk: 281.

The Court: Are you giving it a Government's marking?

The Clerk: Mr. Moriarty asked to have it marked.

Mr. Moriarty: I think it would be a defendants' exhibit. We are going to object to the use of it.

The Court: It is only marked now for identification, so I don't believe that that is material. If it is offered, it can be changed, but [1615] depending on who may offer it, depending on whether it is offered——

(Testimony of Gerald E. Gorans.)

Mr. Brody: (Interposing) Your Honor, at the present time, the questions are limited to the Indictment period.

The Court: But this is on the question of marking.

Mr. Griffin: Yes.

The Court: It is marked now 281 for identification. If it is offered the number may, of course, change regarding it,—if it is offered.

Mr. Moriarty: At this time, if your Honor please, we object to the use of the document as based upon matters not in the record.

The Court: As I understand his testimony, he is using this to refresh his recollection.

Mr. Brody: That is correct, your Honor.

The Witness: Yes.

The Court: And I don't see any reason why he shouldn't be able to use it for that purpose.

Mr. Moriarty: May I ask a further question?

The Court: If you wish further questions, you may.

Mr. Moriarty: Addressed to the same matter.

Is this document necessary for you after [1616] your extended investigation to use for the purpose of refreshing your recollection?

The Witness: Well, the numerous instances where we found that the records were not exactly what you would consider accurate to try to remember this without something to refresh your memory, it is impossible.

Mr. Moriarty: That isn't answering my question.

(Testimony of Gerald E. Gorans.)

The Witness: Well, I find that I need something to refresh my memory on it, so far as all these details are concerned.

Mr. Moriarty: Can you outline for the Jury the numbers of documents that are not in evidence upon which you have based this report?

Mr. Brody: Your Honor, I think this questioning goes beyond the extent at this time.

Mr. Moriarty: I am testing his necessity of using this document, which was prepared subsequent to the meeting of the Internal Revenue Agent.

The Court: You may proceed with your question.

The Witness: Your question is as to what the documents covered by this report—this report covers our examination of the accounting records maintained for eight different companies. Some of the records of these companies are in evidence. So far as an examination of the accounting records, it extends to all of the records that [1617] were available from these companies, whether vendee's invoices, sales slips, cancelled checks, no matter what it may be.

Mr. Moriarty: Does it compile the findings of the 19 people you referred to that participated in the investigation?

The Witness: Basically, it does.

Mr. Moriarty: Then I object to it as a hearsay document, if you Honor please.

Mr. Brody: It is not being offered.

The Court: It is not being offered.

(Testimony of Gerald E. Gorans.)

Mr. Moriarty: Then I object to the use of it.

Mr. Griffin: If the Court please, can't we get back to one basic question? This document was prepared at the request of the Government, and the Government has a copy of it and it is the basis of the Government's case.

Mr. Moriarty: Let us not get confused as to whether or not it was prepared at the request of the Government. The Government was making the investigation, and at the time these people were gathered not at the request of the Government, but at Mr. Kachlein's invitation, and I don't want the record to show it was at our request.

Mr. Griffin: Let the witness testify to it. [1618]

The Court: The question now is whether this may be used to refresh recollection.

Mr. Moriarty: That is my objection.

The Court: I see no reason why it cannot be used for that purpose, if it serves to do so.

Now, of course, it is available for inspection by the Government, or a defendant and should the Jury desire to look at it, the Jury may see it.

Mr. Cox: If the Court please, may I ask the witness a couple of questions?

The Court: You may.

Mr. Cox: Mr. Gorans, as I understand this report is based upon a good deal of work not done by you individually, but by these 19 men who also worked on this at various stages in the investigation?

The Witness: It was based on the work that

(Testimony of Gerald E. Gorans.)

they did, but the work they did was under my supervision and my approval.

Mr. Cox: You did not, however, look at all the documents that they inspected in making your report?

The Witness: No, I don't think that I looked at all the documents that they inspected, but——

Mr. Cox: (Interposing) Therefore, when you look at this document now, in order to refresh your recollection, does it refresh your recollection as to [1619] something you actually inspected at one time, and had knowledge of at some time and are now able to recall because you look at this document?

The Witness: It does.

Mr. Cox: And it is not a record of things which you never saw and never had any knowledge of?

The Witness: It is not a record of anything that I have not seen.

Mr. Cox: In no part?

The Witness: In no part.

Mr. Cox: I thought you said it was based on documents which you did not inspect?

The Witness: It depends upon—the report itself is based upon the general ledger, and what is in the general ledger. The information that goes to make up the general ledger gets into documents that I did not probably see all of, but our report is based upon examination of the general ledger, and the financial records of the company, but, basically, on the general ledger of the company.

(Testimony of Gerald E. Gorans.)

Mr. Brody: Your Honor, I will object to any further questioning here. It is misplaced. If this report serves to refresh the recollection of the witness, and the witness testifies of his own knowledge, he should be able to testify. If Mr. Cox then wishes to examine [1620] closely as to what work he did, it would be proper cross examination.

Mr. Moriarty: If your Honor please, the point we are making on behalf of the Government is that is a document the result of 19 people making an investigation. That is submitted to the witness. It cannot by any chance be considered recollection of things he didn't see, and if he testifies from this document, we will be unable from cross examination to find out which of the 19 actually verified the facts that he is now refreshing his recollection on.

The Court: The document, as I understand from the witness, serves to refresh his recollection. Of course, he cannot testify to something he does not know from his own experience or from his knowledge. As to those portions of the work that he didn't do or doesn't know about, I assume he will not testify, and of course, on cross examination you may go so far as you seem well advised in testing that in using the document or using any other method you think proper in testing the accuracy of his testimony.

Mr. Moriarty: The Court is overruling our objection?

The Court: As to the use of the document, yes.

(Testimony of Gerald E. Gorans.)

Mr. Cox: Could we inquire who signed the original of this report? This one is not signed.

The Witness: It was signed by the senior partner in our office, Mr. Tremper.

Mr. Cox: It was not signed by yourself?

The Witness: It is not signed by myself.

The Court: As I understand, this does not purport to be a written statement of what you are testifying to?

The Witness: No, I am only referring to various sections in here as to what was found.

The Court: You may proceed.

The Witness: And making very limited use of it.

Q. (By Mr. Brody): The question now before you, Mr. Gorans, I will restate as follows:

What did your examination of the books and records of the Hans Forster enterprises reveal as to their correctness and accuracy during the years 1945 through 1949?

Mr. Moriarty: I object as repetitious.

Mr. Brody: The witness was in the midst of answering this question when Mr. Moriarty interrupted.

The Court: Objection overruled. [1622]

Mr. Moriarty: He already answered in three questions.

The Court: I shall overrule objection. You may proceed.

A. We found the books were inaccurate to the

(Testimony of Gerald E. Gorans.)

extent you could not from them in any sense prepare an accurate financial statement.

Q. (By Mr. Brody): And can you state further in what respects these books were inaccurate during that period?

A. Well, we found that there was no reconciliation for the cash on hand, accounts receivable, accounts payable, in most of the companies. We also found that there was no indication that an accurate cash—or account of cash on hand at any year-end had been made in most of the companies, and we also found or could find no indication that a reconciliation of the cash on hand had been made with the amount appearing in the bank ledger.

We also found that to be true, so far as the cash in the bank was concerned. We could find——

The Court: (Interposing) May I inquire, you are answering—when you speak of the general ledger, are you speaking of the general ledger for a particular company?

The Witness: Well, this applies to most companies which covers Alpine Dairy, Issaquah Creamery [1623] Company, Finstad and Utgard, Alpine Ice Cream, Renton Ice and Ice Cream, Simonson and Forster.

It covers, the report basically covers, all of those companies.

Mr. Cox: If the Court please, I would ask to strike any testimony of the witness in response to that answer, and move to strike testimony of any

(Testimony of Gerald E. Gorans.)

concerns other than Alpine Dairy or Issaquah Creamery.

Alleged deficiencies in accounting procedures of other corporations are not relative to Issaquah Creamery or Mr. Forster, doing business as Alpine Dairy.

Mr. Brody: They are relevant in many ways, your Honor. In the first place, the Government has put in evidence the books of Finstad and Utgard and the same thing with Simonson and Forster, and they have put in journals and ledgers of Alpine Ice Cream Company.

These books and records are in evidence, and certainly, on our case, Mr. Gorans is entitled to respond in what particulars they were accurately or correctly kept books of account. As a principal purpose, however, it is our desire to show precisely during this period what the status of bookkeeping and accounting was, what the procedures were and whether or not they were accurate or correct, whether or not they were capable of reflecting in tax returns what the actual [1624] business transactions of the companies had been, and no matters go more directly to the vital question of intent in this case.

Mr. Cox: It is our understanding, if the Court please, that the Government placed many of these items in the record in evidence, and other parties have placed them in evidence, because of their bearing on the particular transactions which may or may not have a bearing on the individual tax lia-

(Testimony of Gerald E. Gorans.)

bility of Mr. Forster, which is relevant to the case or because they may have a bearing upon the Government's net worth calculation, or something of that sort, but to attempt to bring in the over-all sweep of the accounting system at the remaining six of these companies seems to us unnecessary broadening of the case.

The Court: Well, I see no reason why anything should go in other than those books and documents that either relate to the Issaquah Creamery, Alpine and Mr. Forster, any business that he operates as a sole proprietorship, or any documents and records in the—in evidence now; as to other matters, it seems to me it is entirely immaterial.

Mr. Griffin: May I suggest to your Honor on that:

We are dealing with an Indictment that in the [1625] counts charges a certain amount of income declared, a certain amount of income undeclared, that affects the tax.

The Government concedes it is basing its tax upon a theoretical net worth. There isn't anything—and included in net worth is Finstad and Utgard, Alpine Ice Cream Company, and these others.

There isn't anything then in the income of those books that does not affect this net worth statement that the Government is relying upon, whether it is ten thousand dollars in favor of the Government, or in favor of Forster. I suggest we are entitled to show what these books show, that the Govern-

(Testimony of Gerald E. Gorans.)

ment has put in evidence upon which it is basing a theoretical claim of taxes.

The Court: I don't know, it seems it is covered if they are in evidence. My ruling extends to those, as I understood.

Mr. Brody: We will——

The Court: (Interposing) There are some other books, as I understand the witness, that have not been referred to.

Mr. Griffin: I understood your Honor's ruling just this moment that we shouldn't go beyond the Issaquah Creamery, Alpine and Mr. Forster 100% interest.

The Court: And any records in evidence. [1626]

Mr. Brody: All right, we will pursue this line of questioning with regard to books and records in evidence.

The Court: Isn't that it?

Mr. Griffin: Well——

Mr. Moriarty: In the dates as proven by the Government's case, the books might have been good one year, and bad another year, and might be criticized for those years, and have no materiality to the inquiry here. What the Government has put in is certainly subject to the expert opinion of the witness, and not the general systems that were in existence in these various years, at a re-survey of all these businesses when the Government limited its proof to certain matters definitely clear in the evidence, and should be confined to that.

(Testimony of Gerald E. Gorans.)

During that—all those years, I think it is properly subject to the inspection or opinion of this witness, but if there are—if the opinion is based on matters not in evidence, it is submitted it is not the best evidence and he cannot base his opinion on something that has been supplied by many others.

Mr. Brody: Your Honor, it is difficult now to determine the basis of Mr. Moriarty's opinion, whether it is the best evidence rule, or books not in evidence. [1627] As to that, we will not pursue any further questions.

Or, whether it is similar to Mr. Cox's, in that his claim is that any defense matter may only be brought in to points raised by the prosecution.

As to that argument, that is precisely the same matter into which we got into yesterday as to what the defense can show.

The Court: That isn't the basis of my ruling. The limits that I have placed or indicated I would place is testimony to documents not in evidence is all. There is no evidence in here—if there are some books or corporations involved in this examination that are not in evidence—in other words, either as books or as reports, or whatever the case may be—in other words, if there is XYZ Corporation not gone into here, I don't think there is any purpose of bringing testimony out by this witness at this time.

Mr. Griffin: We agree to that.

Mr. Brody: We will offer testimony only to the

(Testimony of Gerald E. Gorans.)

books and records a part of the testimony in this case.

Mr. Cox: Our objection goes further than that. In line with Mr. Moriarty's statement, the Government has shown certain payment from Finstad and Utgard to Issaquah Creamery.

The Court: In other words, you are making the same [1628] objection now as to the various documents that are introduced.

Mr. Cox: Yes, but it goes to the document placed in the record for a particular purpose. If Mr. Gorans wishes to testify to the effectiveness of the accounting system insofar as it could or could not reflect those transactions, or did or did not reflect those transactions, that is one thing, but simply because the books and records of Finstad and Utgard have been placed in the record for one reason to say that that is the basis now for him to embark upon a general discussion of their over-all adequacy seems to us irrelevant and immaterial, even though the books may be in the record to establish certain items and certain specific transactions.

The Court: I don't recognize that as a valid objection. I think once the books have been brought in, even though only a portion have been brought in, that then the balance of the books may be admissible.

Mr. Cox: Having no bearing on the specific items heretofore admitted into evidence?

The Court: Of course, I assume they have a

(Testimony of Gerald E. Gorans.)

bearing on figures that go to make up income and tax.

Mr. Cox: Of Finstad and Utgard?

The Court: Over this period of time, yes. [1629]
In other words, I take it any part of the books of account have some relationship to——

Mr. Cox: (Interposing) The tax of Finstad and Utgard was not here involved.

The Court: And then, of course, the fact that certain items there went to Mr. Forster or went to Issaquah makes a connection.

Mr. Cox: Yes; well, we would have no objection to examination as to the adequacy of this so far as reciting the expenditures to Issaquah or covering the transactions involving Mr. Egeness's testimony or method of paying Mrs. Finstad, other than the objection we have already made for the record, which in view of your Honor's position, that would be relevant testimony, but to come in now and start in talking about reconciliation of a bank at Conway, whether that was or was not done when, so far as I can see, the Government has not relied on any such bookkeeping entry seems to me to be going beyond the extent of the case, and, as I understand it, the Government's net worth computation is based upon investment costs in these concerns, and not upon the general income of the companies, and certainly the expenditures which they contend were diverted and not properly accounted for elsewhere again do not enter into the general adequacy of the books of Finstad and Utgard and although your

(Testimony of Gerald E. Gorans.)

Honor [1630] is perfectly correct, everything in the books has a relationship to some business income tax, it is the Finstad and Utgard for which there is no indictment except as it has a bearing on Mr. Forster's personal tax.

The Court: Well, I don't know that I can go any further than I have indicated now to proceed.

Q. (By Mr. Brody): Now, Mr. Gorans, can you state in detail with reference to your examination of the books of Alpine Dairy and Issaquah Creamery, Finstad and Utgard, and Simonson and Forster for the years 1945 to 1949, and Alpine Ice Cream Company in the year 1949, any particular details in which the books and records did not accurately or correctly reflect the business transactions reported therein.

Mr. Cox: If the Court please, may we have a standing objection to this line of testimony then so that we need not interrupt further on the same grounds stated?

The Court: Is that agreeable?

Mr. Griffin: Yes.

Mr. Brody: That is agreeable.

The Court: If you have any objection as to form or to particular questions——

Mr. Cox: Yes, or if we have additional grounds, we will so state, your Honor. [1631]

The Court: Does the Government have any objection they are making?

Mr. Moriarty: So long as they are confined to the books in evidence.

(Testimony of Gerald E. Gorans.)

Mr. Cox: And this will be on the grounds previously stated to your Honor yesterday and raised this morning by similar testimony of the witness.

The Court: It is understood.

The Witness: May I have the question again?

The Court: Do you wish to restate it, or have the reporter read it?

Perhaps, Mr. Brody——

Mr. Brody: (Interposing) Have the reporter read it.

The Court: Mr. Reporter, would you read the question?

(Whereupon, the preceding question was read by the reporter.)

Mr. Moriarty: That is a question that can be answered yes or no, I believe; otherwise, it is a shotgun.

The Court: That is up to the witness.

A. As I understand the question, it asks for the details in each instance where they do not agree that I know of.

Mr. Moriarty: I think the question should be, do [1632] you know of any?

Q. (By Mr. Brody): The question is: Can you state? A. Yes, there are differences.

Q. Well, now, will you state what those differences are?

A. Issaquah Creamery Company, there is no indication that the cash——

Mr. Keesling: We can't hear the witness.

A. (Continuing) There is no indication that the

(Testimony of Gerald E. Gorans.)

cash on hand had ever been reconciled, with the amount actually on hand, as shown in the other records of the company. This is the amount for the general ledger, and a reconciliation of these figures would have revealed that the general ledger was overstated in that it showed more cash on hand than the company actually had, and in so doing, it affected income.

There was no indication that the bank account had been reconciled for Issaquah Creamery Company, and in making a reconciliation, it was found that the bank account showed—for the general ledger showed less amount than what the actual balance in the bank would show at that same date, and as a result, there was an understatement of income there.

The notes receivable that the company had there had not been reconciled, the details of the notes receivable [1633] had not been reconciled with that shown in the general ledger, and the actual detail of the notes receivable exceeded the amount in the general ledger, and in so doing, there was an understatement of income.

Mr. Patten: Could we place the dates where these documents were under or over?

The Court: As I understand now, you are giving in a general way the five years involved?

The Witness: That is correct.

Mr. Brody: That is correct.

A. (Continuing) Which particular year this might have happened, on the accumulation, it cov-

(Testimony of Gerald E. Gorans.)

ers all the years, and which year the particular year falls into is impossible now to go back and determine in which year it would actually fall. We could find no records of inventory at Issaquah Creamery Company, so we don't know whether the inventory agreed or not with the amounts recorded.

We found that the accounts payable had not been reconciled and the accounts payable, the total amount shown in the general ledger for Issaquah Creamery Company, particularly at December 31, 1949, was far in excess of the actual liability of that company at that date.

We found that they had a separate account for the [1634] liabilities for milk that had been purchased from the farmers and that account—the details of that account had not been reconciled with the balance in the general ledger, and we found there that the general ledger balance was greater than the actual detail in support of that ledger balance, and as the result of that, there was an understatement of income for that year.

There was some other minor items on Issaquah Creamery Company, and Alpine Dairy we found the same situation existing so far as cash was concerned.

The amount in the general ledger had not been reconciled with the actual cash on hand, and a reconciliation, which could have been very easily done at any time showing that there was a substantial amount of cash on hand, and in not reflecting this in the general ledger, the income for Alpine Dairy

(Testimony of Gerald E. Gorans.)

was under-stated. We found that the bank account for the general ledger had not been reconciled, and I don't recall offhand which way that reconciliation worked out, whether there was an understatement or overstatement of income, but it was out of balance at December 31, 1949, approximately five thousand dollars, as I recall.

The accounts receivable for Alpine Dairy, the details of those accounts had not been reconciled with the balances in the general ledger and a reconciliation of that amount showed that there was a considerable amount [1635] actually due that was not reflected in the general ledger, and that resulted in an understatement of income.

We found accounts payable for Alpine Dairy had not been reconciled, and in making a reconciliation of that we found that the balances in the general ledger for accounts payable was in excess of the actual liabilities that the company owed so far as their vendor's invoices were concerned, and that resulted in an understatement of income.

We couldn't find any inventory records for Alpine Dairy, either, so that we don't know whether they agreed with the records or not.

Now, in Alpine Ice Cream Company, December 31st, the cash on hand for that company had not been reconciled with the amount in the general ledger, and there, again, they had more cash on hand than actually showed in the general ledger.

The accounts payable for Alpine Ice Cream had not been reconciled, and the balance in the general

(Testimony of Gerald E. Gorans.)

ledger in this instance was less than the actual liability of the company, and therefore, resulted in an overstatement of income for that company.

Finstad and Utgard, I don't recall of any particular instance where there was any material amount [1636] involved and the same with Simonson and Forster, but there was no indication there that these particular detailed accounts had been reconciled with the amounts in the general ledger, either.

Q. (By Mr. Brody): Now, what is the purpose, Mr. Gorans, of the reconciliation of which you speak?

A. Well, the reconciliation is that it serves the principal purpose of proving whether or not a figure in the general ledger is accurate or not. Under entries in the general ledger are summary information that comes from other sources.

In order to prove whether that summary information is correct or not, it is necessary to take a trial balance, for instance, of accounts receivable, or necessary to reconcile the ending balance in the general ledger after posting these summary figures to determine that you have recorded the proper figures.

Q. And what is the effect of failure to make such a reconciliation in the general ledger?

A. Well, the effect, which I think I have pointed out, results in—can result in either an overstatement or understatement of income. The general ledger is your final book of account for any com-

(Testimony of Gerald E. Gorans.)

pany, and it represents everything that comes from all the other [1637] subsidiary records which you can have any number of people working on, but so far as determining whether the company has made any money or lost any money, or the financial position of that company, it has to be determined from the general ledger.

Q. And what is the position of the general ledger in relation to the other books of the company?

A. Well, the general ledger is a book in which you summarize all the information coming from the other subsidiary records.

Q. What is the final and authoritative book of account of any business enterprise?

A. The general ledger is.

Q. And from your examination, were the books and records of Alpine Dairy, Issaquah Creamery Company, Simonson and Forster, Finstad and Utgard for the years 1945 to 1949 and the records of Alpine Ice Cream Company for the year 1949, were those books and records sufficient and adequate to produce information upon which correct tax returns could be filed?

A. They were not.

Mr. Moriarty: Objection.

The Court: What was it?

Mr. Cox: Objected to as leading.

Mr. Moriarty: Also objected to as including several matters that I thought were restricted by the Court. [1638]

(Testimony of Gerald E. Gorans.)

Mr. Brody: I don't see where it can be leading, where it is answered by "yes" or "no."

The Court: I am going to ask the reporter to read the question.

(Whereupon, preceding question was read by the reporter.)

The Court: Well, the question has been answered, and the Court would overrule the objection, and the answer may stand.

Q. (By Mr. Brody): Now, with reference to Alpine Dairy, Mr. Gorans, did you examine the books and records of Alpine Dairy from 1945 through 1949? A. Yes.

Q. Was there any indication to you that the specific entry of cash on hand had ever been reconciled with the general ledger?

A. There was no indication.

Mr. Cox: Repetition, if the Court please.

Mr. Brody: I am just calling attention to the specific item, your Honor.

Mr. Moriarty: Three times.

The Court: I think you covered it. [1639]

Q. (By Mr. Brody): I am now showing you, Mr. Gorans, Plaintiff's Exhibit 272, and I want you to state, if you can determine from that record the cash on hand as per that general ledger for October 31, 1949?

A. At October 31, 1949, the general ledger shows a negative cash on hand, \$21,032.98.

The Court: What was the figure?

The Witness: \$21,032.98.

No. 14656

United States
Court of Appeals
for the Ninth Circuit

HANS FORSTER,

Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

Transcript of Record
(In Six Volumes)
VOLUME II.
(Pages 471 to 936, inclusive)

Appeal from the United States District Court for the Western
District of Washington, Northern Division

FILED

DEC - 2 1955

PAUL P. O'BRIEN, CLERK

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(Testimony of Gerald E. Gorans.)

Q. (By Mr. Brody): Mr. Gorans, in accounting practice, is it possible to have a negative figure of cash on hand?

A. It is a physical impossibility.

Q. Now, with reference again to Plaintiff's Exhibit 272, can you determine what the figure for cash on hand is for November 30th, 1949?

A. It shows a negative balance of \$16,735.81.

Q. Now, showing you Defendants' Exhibit A-34——

The Court: (Interposing) Just so that the record is clear, Exhibit 272 is the Alpine Dairy Ledger, is that right?

The Witness: Yes.

Mr. Brody: Yes, your Honor.

Q. (By Mr. Brody continuing): Now, showing you Defendants' Exhibit A-34, which has been identified as Mrs. Wilcox's [1640] cash summary for the month of October, 1949, is it possible for you to determine from Mrs. Wilcox's summary the cash on hand as reported thereon for October 31st, 1949?

A. It is necessary, along with this, to refer to the bank statements to determine the actual cash on hand.

Mr. Moriarty: Is that in evidence?

Mr. Brody: Will you mark this?

The Clerk: Defendants' Exhibit A-45 marked for identification.

The Court: Haven't we an A-45?

No, that was the—it was 281.

Mr. Griffin: 281, that is right.

(Testimony of Gerald E. Gorans.)

(Defendants' Exhibit No. A-45 marked for identification.)

Q. (By Mr. Brody): Now, showing you what has been marked, Mr. Gorans, as Defendants' Exhibit A-45, can you identify those records?

A. These are bank statements for Alpine Dairy for the month of September, October, November, and December, 1949, and January of 1950.

Q. And can you state where you first saw those records?

A. We obtained these in the office at Issaquah Creamery [1641] Company at the time of making our examination.

Q. And did you use those records in the process of making your examination? A. We did.

Mr. Brody: We still now offer A-45 in evidence, your Honor.

Mr. Keesling: Counsel, what bank is this?

Mr. Griffin: Peoples.

Mr. Moriarty: Peoples of Seattle, or Renton?

Mr. Brody: Peoples National Bank of Seattle.

Q. (By Mr. Brody): Mr. Gorans, will you state what bank that is from?

A. Peoples National Bank of Washington in Seattle. I think they refer to it as the main office.

Mr. Cox: May I question on voir dire?

The Court: You may.

Mr. Cox: I note certain additions in pen and ink on certain pages; do you know who made those, Mr. Gorans?

(Testimony of Gerald E. Gorans.)

The Witness: It was reported to me as having been made by Mr. Erickson.

Mr. Cox: You have no knowledge of your own?

The Witness: I have no knowledge of my own.

The Court: They were on there when you saw it? [1642]

The Witness: Yes, they were on there when I saw it.

Mr. Cox: We will object to these, your Honor, on the same grounds previously stated. We understood from Mr. Brody a few moments ago that they were not going to go into the adequacy or inadequacy except as to the records already in evidence, and we are now offered an additional record.

The Court: That is within the period, is it not?

Mr. Brody: Yes.

Mr. Cox: Yes, except for the last month which I assume relates back to the last period.

The Court: 1949.

Mr. Cox: Yes.

The Court: I assume that they may offer it as part of the records of account of the Alpine Dairy, is that correct?

Mr. Brody: It is a subsidiary portion of the records the Government has put in evidence, the ledger and journal.

The Court: I will overrule that objection. Any other objection?

Does the Government have any?

Mr. Moriarty: No objection, your Honor.

The Court: It may be admitted. [1643]

(Testimony of Gerald E. Gorans.)

(Defendants' Exhibit A-45 admitted in evidence.)

Q. (By Mr. Brody): Now, can you state with reference to Mrs. Wilcox's summary sheet, Defendants' Exhibit A-34 and A-45 what the cash on hand—what you determined the cash to be on October 31, 1949?

Mr. Moriarty: Cash in the bank, isn't it?

The Witness: Cash on hand.

Mr. Brody: I am referring to cash on hand.

Mr. Moriarty: Isn't it a bank statement?

Mr. Brody: The witness has testified he will make use of that to determine cash on hand. The question relates to cash on hand.

The Court: Do you want the reporter to read the question, or do you have it in mind, Mr. Gorans?

The Witness: I would like to have him read the question.

The Clerk: Mr. Reporter, read the question.

(Whereupon, the preceding question was read by the reporter.)

A. The cash on hand was \$9,566.82.

Q. (By Mr. Brody): Now, is that a positive or a negative figure?

A. That is a positive figure. [1644]

Mr. Cox: We would wish the figure again, please.

The Witness: \$9,566.82.

Q. (By Mr. Brody): Now, can you state the difference between the figure you have determined to be the cash on hand for October 31, 1949, and

(Testimony of Gerald E. Gorans.)

the figure which appeared in Plaintiff's Exhibit 272, the general ledger for that date?

A. There is \$30,599.80 difference.

Q. Now, will you state what you have determined to be the figure for cash on hand, Alpine Dairy, as of November 30, 1949?

A. The cash, actual cash, on hand, at November 30, 1949, was \$13,346.11.

Q. Is that a positive or a negative figure?

A. That is a positive figure.

Mr. Keesling: If the Court please, we can hardly hear the witness.

The Court: Mr. Keesling is having trouble hearing you, Mr. Gorans. If you will keep your voice up.

Q. (By Mr. Brody): And will you state the difference between the figure that you determine to be the actual cash on hand as of November 30, 1949, and the figure which appeared in Plaintiff's Exhibit 272, the Alpine Dairy [1645] General Ledger?

A. The difference is \$30,081.92.

Q. Now, have you examined the working papers and statement of Mr. Taylor for the month of October, 1949? A. I have.

Q. And do you have those papers with you?

A. No, I don't.

Q. Can you state where they are?

The Court: Are these the ones I have?

Mr. Brody: No, your Honor. I am about to offer them. A. I think you have them.

Q. (By Mr. Brody): I do not have them there,

(Testimony of Gerald E. Gorans.)

Mr. Gorans. I think they are the ones which were segregated.

The Court: I may have interrupted the witness's answer there. The question was whether he had examined——

Mr. Brody: (Interposing) ——examined these records, your Honor. I will now attempt to offer these, your Honor.

The Court: And he said he had, was that your answer?

The Witness: Yes.

The Clerk: Defendants' Exhibit A-46 marked for identification. [1646]

(Defendants' Exhibit No. A-46 marked for identification.)

Q. (By Mr. Brody): Now, Mr. Gorans, showing you what has been marked for identification as Defendants' Exhibit A-46, can you state what that is?

A. Those are working trial balances for Alpine Dairy dated October 31, 1949.

Q. Can you identify the handwriting in which the work sheet appears? A. Yes.

Q. Whose handwriting is it?

A. Mr. Taylor's.

Q. And where did you find that work sheet and the attached statement?

A. It was in Mr. Taylor's working papers.

Mr. Brody: I will now offer Defendants' Exhibit A-46.

(Whereupon, there was a brief pause.)

(Testimony of Gerald E. Gorans.)

Mr. Cox: If the Court please, we would object to the admission of this exhibit on the grounds of our standing objection previously allowed to this entire line, and with respect to certain of Mr. Taylor's work papers offered by the Government. It violates the privilege. The Government has placed in evidence certain [1647] work papers obtained under the situation of Mr. Kachlein's dual representation of both parties, and we feel it is more serious to have these now offered by another defendant against the interest of Mr. Taylor in view of the matter of their acquisition and the part Mr. Kachlein had until thus acquired by the accounting firm which Mr. Gorans represents.

The Court: I will ask a question or two.

Mr. Gorans, you stated that you found document A-46 for identification in Mr. Taylor's working papers. Where were they?

The Witness: They were on the tenth floor in the Federal Court House.

The Court: You first saw them there?

The Witness: Well, I had seen them when we first started our examination of Mr. Forster's Company back in 1950.

A Juror: We can't hear.

The Court: They can't hear you.

The Witness: The first time we saw these papers was back in 1950 when we first started examination of the Forster Companies.

The Court: Where were they?

The Witness: Out at Issaquah Creamery Com-

(Testimony of Gerald E. Gorans.)

pany in the basement of the office out there. [1648]

The Court: And you found them when you were examining other books?

The Witness: Yes, sir.

Mr. Cox: Could I ask the witness a series of questions?

The Court: Yes.

Mr. Cox: You were advised by the memorandum of Mr. Tremper, which you stated was your first introduction to this case, that Mr. Kachlein had been fully authorized by Mr. Forster with respect to your employment, the employment of the firm of Touche, Niven, Bailey and Smart, and you took on your investigation into Mr. Forster's financial affairs?

The Witness: Yes.

Mr. Cox: And, at the time you first went out to Issaquah Creamery, May 1, 1950——

The Witness: (Interposing) Yes.

Mr. Cox: (Continuing) ——you were going pursuant to your employment by Mr. Kachlein and pursuant to his directions as to the investigation to be undertaken into Mr. Forster's affairs?

The Witness: I don't believe we were employed by Mr. Kachlein, but by Mr. Forster.

Mr. Cox: Through the agency of Mr. Kachlein?

The Witness: I don't know how that came about.

Mr. Cox: You understood he had authority to employ you, did he not?

The Witness: I don't know whether he had authority, or not. I don't think he did.

(Testimony of Gerald E. Gorans.)

Mr. Cox: You read the memorandum that Mr. Tremper prepared of that meeting?

The Witness: I read the memorandum.

Mr. Cox: Is that memorandum still here?

The Clerk: It wasn't offered.

Mr. Cox: Do you have a copy of it, Mr. Patten?

Mr. Patten: I think it was identified.

Mr. Cox: It was identified, but it is not here.

Mr. Obenour: What was the number?

The Clerk: A-33.

Mr. Brody: Your Honor, I think it is quite clear from the testimony——

The Court: (Interposing) If you want to object, I will sustain the objection.

Mr. Griffin: I was just coming up to object to it.

The Court: I will sustain objection to the last question. I think it is going beyond voir dire.

Mr. Brody: And then is there a ruling on the offer?

The Court: Objection overruled. Any other objection? [1650]

Mr. Brody: It is Defendants' Exhibit A-46.

(Defendants' Exhibit No. A-46 admitted in evidence.)

Q. (By Mr. Brody): Now, will you state, Mr. Gorans, what appears on Mr. Taylor's work sheet as cash on hand for October 31, 1949?

A. The work sheet shows two figures, one figure shows the negative amount of \$21,032.98, which is the amount that appears in the general ledger.

Q. And, now, referring you to the statement

(Testimony of Gerald E. Gorans.)

which is attached to the exhibit, will you state what figure appears as cash on hand in the statement?

A. There is no figure.

Q. Now, from a comparison of the statement and the underlying working papers, can you determine why the statement is silent as to cash on hand?

A. The amount shown for accounts receivable has been reduced by this \$21,032.98 and the lesser figure for accounts receivable has been shown on this statement.

Q. And what is the effect of reducing from accounts receivable the negative amount of cash as shown on the working papers?

A. The only effect I could believe would be to cover [1651] up the fact that there was a negative cash shown in the general ledger.

Q. Now, can you determine from Plaintiff's Exhibit 272 and the bank statement the amount of cash on hand as to the general ledger for December 31, 1949?

A. The cash on hand was \$1,727.22 on Exhibit 272.

Q. Now, showing you Defendants' Exhibit A-36, which Mrs. Wilcox identified as her summary for the month of December, 1949, can you determine from A-36 the actual cash on hand for December 31, 1949?

A. Yes.

Q. And what is that figure?

A. \$27,058.02.

Q. Now, what is the difference between the actual figure which you determined for cash on hand

(Testimony of Gerald E. Gorans.)

as of December 31, 1949, at Alpine Dairy, and the figure shown in Exhibit 272, the general ledger?

A. The difference is \$25,330.80.

Q. Now, Mr. Gorans, what is the effect of this difference in cash on hand between the actual figures in the ledger upon the income of Alpine Dairy for the year 1949?

A. It results in the understatement of income in the amount that the cash is understated.

Mr. Griffin: It is recess time. [1652]

Mr. Brody: Your Honor, this would be an appropriate time before embarking on the next subject.

The Court: Ladies and Gentlemen of the Jury.

We will take the mid-afternoon recess. The Court calls your attention to the admonition given on similar occasions and asks that you heed it on this occasion.

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, at 2:47 o'clock p.m. recess was had in the within-entitled and numbered cause until 3:05 o'clock p.m. March 18, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit):

The Court: You may call the jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

(Testimony of Gerald E. Gorans.)

It is stipulated that the Jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Brody.

Q. (By Mr. Brody): Now, Mr. Gorans, showing you Defendants' [1653] Exhibit A-37, which Mrs. Wilcox identified as her report of Accounts Receivable for the month of—for December 31, 1949, have you examined that exhibit? A. Yes.

Q. Can you state the amount of accounts receivable as shown on that report as of December 31, 1949? A. The amount is \$359,943.74.

Mr. Moriarty: I didn't get it.

Q. (By Mr. Brody): Will you repeat the figure again, please, Mr. Gorans?

A. \$359,943.74.

Q. Now, can you state, by reference to the Alpine Dairy Ledger, Exhibit 272, what figure appears there as the accounts receivable for December 31, 1949? A. \$349,588.76.

Q. Now, Mr. Gorans, what is the difference between the amount of accounts receivable for December 31, 1949, as shown on Mrs. Wilcox's report, Exhibit A-37 and as shown in the general ledger, Exhibit 272?

A. The difference of \$10,354.98.

Q. And what would be the effect of this difference upon the 1949 income of Alpine Dairy?

A. It results in an understatement of income in the [1654] amount of \$10,354.98.

(Testimony of Gerald E. Gorans.)

Q. And do you know which of those two figures was used for the determination of income tax as reported in the year 1949?

A. The amount appearing in the general ledger, the lesser amount, shows on the income tax return.

Q. Now, as to the accounts payable of Alpine Dairy, did you make a reconciliation of accounts payable as of the year-end December 31, 1949?

A. Yes.

Q. And what was the result of that reconciliation?

A. I found that the general ledger balance did not agree with the detail of accounts payable.

Q. To what extent?

A. The difference—the general ledger was in excess of the actual liabilities in the amount of \$15,507.86.

Q. Now, what was the effect of this discrepancy that you found on your examination of Alpine Dairy for 1949?

A. It would result in an understatement of income of \$15,507.86.

Q. Now, referring you, Mr. Gorans, to Defendants' Exhibit A-36, which is Mrs. Wilcox's year-end summary, as of December 31, 1949, will you state what her figure [1655] shown thereon was for wholesale sales?

A. The wholesale sales amounted to \$234,379.50, for the month of December.

Q. Now, referring to the Alpine Dairy ledger, once more, will you state what figure has been en-

(Testimony of Gerald E. Gorans.)

tered in the ledger for wholesale sales as of December 31, 1949? A. \$227,379.50.

Q. Will you state the difference in wholesale sales as they appear in Mrs. Wilcox's summary, Exhibit A-36 and as they appear in Mr. Taylor's ledger, Exhibit 272?

A. There is a difference of \$7,000.

Q. And is the figure in the ledger greater or lesser than the figure in the monthly summary?

A. The figure in the ledger is \$7,000 less than the amount in Mrs. Wilcox's summary.

Q. Now, again directing your attention to the summary, Exhibit A-36, what was the figure shown by Mrs. Wilcox as her collections on accounts receivable for December 31, 1949?

A. \$194,432.82.

Q. What was the figure that Mr. Taylor entered in the ledger for collections on accounts receivable as of the same date?

A. \$206,432.82. [1656]

Q. What is the difference, Mr. Gorans, between the figure for collections on accounts receivable as shown in Mrs. Wilcox's summary, Exhibit A-36, and in Mr. Taylor's ledger, 272?

A. The figure shown in the ledger, is \$12,000 greater than the amount shown on Mrs. Wilcox's summary.

Q. Now, referring again to Exhibit A-36, Mrs. Wilcox's year-end summary for 1949, what was Mrs. Wilcox's figure for cash receipts?

A. \$322,678.78.

(Testimony of Gerald E. Gorans.)

Q. And what was the figure that appeared in Mr. Taylor's ledger for cash receipts as of the same date? A. \$327,678.78.

Q. And what was the difference between the figures which appeared in Mrs. Wilcox's summary, Exhibit A-36, and of Mr. Taylor's ledger, Exhibit 272, for 1949?

A. The figure used by Mr. Taylor in the general ledger is five thousand dollars greater than the figure appearing on Mrs. Wilcox's summary.

Q. Taking into consideration, Mr. Gorans, the three matters on which I have just examined, the wholesale sales, collections on accounts receivable, and cash receipts, what was the net effect of those differences between Mrs. Wilcox's summary report and Mr. Taylor's ledger upon the income of Alpine Dairy for 1949? [1657]

A. It resulted in an understatement of income in the amount of seven thousand dollars.

Q. Were you able to determine whether the figures as used by Mrs. Wilcox in A-36 or the figures that appeared in Mr. Taylor's ledger, 272, were used in the tax return?

A. The figures appearing in the ledger were used in the tax return.

Q. Now, assume, Mr. Gorans, that Mrs. Wilcox's figures for wholesale sales, collections on accounts receivable, and cash receipts had been used in the general ledger for December, 1949, what would then have been the general entry, ledger entry, for cash on hand?

(Testimony of Gerald E. Gorans.)

A. The cash on hand would have shown a negative balance of \$3,272.78.

Q. Now, will you state if any accounting record other than the ledger sheets alone appear in Exhibit 272?

A. There is a journal in which the figures furnished by Mrs. Wilcox were entered each month, and from that, posted to the general ledger. That is the only thing that appears in here that is not ledger sheets or not as a part of the general ledger.

Q. Now, in whose handwritings do those entries appear?

A. They appear to be in Mr. Taylor's handwriting. [1658]

Q. Now, I will show you Defendants' Exhibit A-38 which Mrs. Wilcox identified as her summary for the month of December, 1949. A. 1948.

Mr. Griffin: 1948, isn't it?

Mr. Brody: That is correct, 1948.

Q. (By Mr. Brody): Now, what was the figure shown thereon for discounts? A. \$376.66.

Q. Now, is there any figure that appears in the discount column that you cannot identify?

A. There is an amount appearing at the bottom of the summary that was prepared by Mrs. Wilcox, \$5,400.44, which is not identified on this summary report.

Q. Now, will you turn now to the journal which you have just described as being a part of Exhibit 272, and then state what figures for discounts of

(Testimony of Gerald E. Gorans.)

Alpine Dairy appear in the journal for December 31, 1948?

A. There are two figures appearing here alongside the description "discounts". One amount is \$376.66 and the other amount is \$7,400.44.

Q. Now, what is the difference between the figures which you have just quoted from Mrs. Wilcox's summary, Exhibit 38, and the figures that are noted for discounts [1659] in Mr. Taylor's journal for year ending 1948?

A. Assuming that this \$5,400.44 appearing on Mrs. Wilcox's summary is actually discount, then the difference is \$2,000.00 even between the amount appearing in the summary and the amount that has been recorded in the journal.

Q. Now, in your examination of the tax return of Alpine Dairy for the year 1948, could you determine whether the figures in Mrs. Wilcox's summary or the figures in Mr. Taylor's journal were used as the basis for the tax return?

A. The figures in the journal have been posted to the general ledger and the amounts that I referred to as discounts have been posted to the column appearing in the back of the ledger covering expenses for discounts and the discount figure as shown here has been used on the tax return.

Q. And I will now show you Defendants' Exhibit A-39, which Mrs. Wilcox identified as her Summary of the month of December, 1949.

Now, will you examine that, Mr. Gorans, and

(Testimony of Gerald E. Gorans.)

determine what figures Mrs. Wilcox showed for cash receipts, number 31, 1947?

A. Mrs. Wilcox shows a figure of \$320,839.94 as cash receipts. [1660]

Q. Now, turning to Mr. Taylor's journal, which is a part of Exhibit 272, what figure did Mr. Taylor show in his journal for cash receipts?

A. A figure of \$334,839.94.

Q. Now, what is the difference between the figures as shown in Exhibit A-39, Mrs. Wilcox's summary, and 272, Mr. Taylor's journal, for cash receipts for 1947?

A. There is a difference of fourteen thousand dollars.

Q. And which is the greater figure?

A. The figure recorded in the journal was fourteen thousand dollars greater than the amount appearing on Mrs. Wilcox's summary.

Q. Now, will you examine Exhibit A-39, Mrs. Wilcox's summary, and determine her figures for wholesale sales, as of the year-end 1947?

A. Mrs. Wilcox shows a figure of wholesale sales, or for wholesale sales, of \$225,269.28.

Q. And what amount does Mr. Taylor show in his journal, Exhibit 272, for wholesale sales?

A. He shows a figure of \$239,269.28.

Q. Is Mr. Taylor's figure more or less than Mrs. Wilcox's figure?

A. His figure is greater than Mrs. Wilcox's [1661] figure.

Q. And how much greater? A. \$14,000 greater.

(Testimony of Gerald E. Gorans.)

Q. Which figures were used in the preparation of the income tax return for Hans Forster for the year 1947?

A. The figures as recorded here in the journal was posted to the sales account in the general ledger, and the sales figure appearing in the general ledger is the amount that appears on Mr. Taylor's work sheet from which the tax return was prepared.

Q. Now, does the amount in the general ledger agree in each case for cash receipts and wholesale sales with the amount shown in Mr. Taylor's journal?

A. Yes.

Q. Now, referring from the ledger, Mr. Gorans, to the tax return——

Mr. Moriarty: What exhibit?

Mr. Brody: Plaintiff's Exhibit 3.

Mr. Cox: Which?

Mr. Brody: Plaintiff's Exhibit 3.

Q. (By Mr. Brody continuing): Will you first state the combined retail and wholesale sales as stated in the general ledger for the year-end of 1947? [1662]

A. The combined retail sales and wholesale sales as shown in the general ledger amounted to \$3,-688,286.

Q. Now, what was the combined figure for retail and wholesale sales which was included in the tax return?

A. The tax return shows sales of \$3,701,286.

Q. What is the difference between the figure for

(Testimony of Gerald E. Gorans.)

combined wholesale and retail sales as shown in the general ledger and the figures shown in the tax return, Plaintiff's Exhibit 3? A. \$13,000.

Q. Now, returning to the figures——

Mr. Keesling: Is that thirteen thousand more or less?

The Witness: The sales figures on the tax return is \$13,000 greater than the amount appearing in the general ledger.

Q. (By Mr. Brody continuing): Now, referring back to the figures contained in Mrs. Wilcox's report, Exhibit A-39, for cash receipts and wholesale sales and the \$14,000 difference between those figures and the figures included in the general ledger, if those figures in the general ledger had been used in the tax return, what would have [1663] been the effect of the difference between Mrs. Wilcox's figures and Mr. Taylor's journal figures upon the income of Alpine Dairy for the year 1947?

A. Well, the result of these two differences, so far as sales are concerned, is that the sales shown on the tax return——

Q. (Interposing) Well, I asked you to assume, Mr. Gorans——

A. (Interposing) Yes?

Q. ——that the figures used in the general ledger were, in fact, used on the tax returns.

Now, if that were the case, what would be the effect upon income of Alpine Dairy for the year 1947 of the difference between Mrs. Wilcox's figures and Mr. Taylor's ledger figures?

(Testimony of Gerald E. Gorans.)

A. If Mrs. Wilcox's figures had been used the income for the year would have been fourteen thousand dollars less than the amount actually recorded in the general ledger.

Mr. Cox: The question was if Mr. Taylor's figures was used.

Q. (By Mr. Brody): What the effect on the income for 1947 of Mr. Taylor's general ledger figures if they had been used on the tax return? [1664]

A. I am not sure I understand your question.

Q. Well, I want to make it clear, Mr. Gorans.

Let us assume that instead of the figures actually reported on Plaintiff's Exhibit 3, there had appeared figures directly from Mr. Taylor's ledger.

Considering the fact that the figures in Mr. Taylor's ledger were \$14,000 greater than Mrs. Wilcox's figures, what would have been the effect of that difference upon the income, the taxable income, of Alpine Dairy for the year 1947?

A. The taxable income would have been \$27,000 less than the amount actually reported on the return.

Q. Now, I ask that question, Mr. Gorans, without reference to any discrepancy that exists between the general ledger figures and the figures on the return.

A. If the general——

Q. (Interposing) I ask you to assume that the general ledger figures had been used on the return?

A. Well, the return—the income would have been overstated \$14,000.

(Testimony of Gerald E. Gorans.)

Q. Now, referring only to the difference between the figures used in the general ledger, and the figures used on the tax return, what was the effect of that difference upon the taxable income of Alpine Dairy for the year 1947? [1665]

A. The income is overstated \$13,000.

Q. Now, considering the difference between Mrs. Wilcox's figures and Mr. Taylor's ledger figures, and considering also the difference between Mr. Taylor's ledger figures and the figure on Mr. Taylor's tax return, exhibit P-3, what is the cumulative effect of those differences, or the effect of those differences upon the income of Alpine Dairy as reported for the year 1947?

A. The income is overstated in the amount of \$27,000.

Q. And can you state what effect—what consequences that will have upon the income tax paid that year by that taxpayer?

A. It would increase the income tax substantially.

Q. Now, have you examined the general ledger of Mr. Taylor for December 31, 1948?

A. Yes.

Q. Is the general ledger in balance for that date? A. No, it is not.

Q. By what amount is it out of balance?

A. It is out of balance in the amount of \$21,568.97.

Q. Will you state, Mr. Gorans, what the significance of the balance is in accounting?

(Testimony of Gerald E. Gorans.)

A. The general ledger, in double entry book-keeping, [1666] consists of a series of debits and credits, and debits either represent assets or their expense, and credits either liabilities or income and a general ledger, whenever there is a debit entry posted in any of the accounts, there has to be corresponding credit entries, either one or more, but they have to equal in total amounts the amount of the debit entry. When you have an entry recorded on one side or, in effect, on either the credit or debit side, and a corresponding entry not entered on the other side of the books, it is considered as being out of balance.

Q. Now, as a matter of accounting principle, should books be in balance for any year-end?

A. They should always be in balance.

Q. And what does it indicate to you if you find books are not in balance?

A. That entries have been incorrectly made in the general ledger.

Q. Now, when you found that the general ledger was, in fact, out of balance on December 31, 1948, did you check to determine why? A. Yes.

Q. And what did you find?

A. I found that a credit had been made to the capital account of Mr. Forster in the amount of [1667] \$21,568.97.

Q. I will now show you Plaintiff's Exhibit 4, which is the tax return of Mr. Forster for the year 1948. Now, would you—have you checked the figures in that tax return, Plaintiff's Exhibit No. 4, against

(Testimony of Gerald E. Gorans.)

the figures in the general ledger? A. Yes.

Q. And what did you find when you made that check?

A. I find there is an item of bad debts on the tax return in the amount of \$16,568.97 that does not appear in the general ledger.

Also, on the balance sheet that is attached to the tax return, there is an item referred to as notes receivable in the amount of \$5,000 which is not in the books.

Q. And what is the total of the two amounts which you found on the tax return which you did not find in the general ledger?

A. \$21,568.97.

Q. And was that the amount by which the general ledger was out of balance? A. It was.

Q. Now, did you compare the capital account in the balance sheet which was attached to the tax return [1668] with the opening entry in Exhibit 272, Alpine Dairy general ledger for the year 1949?

A. Yes.

Q. And what did you determine by that comparison?

A. That the capital account as shown on the tax return for the year ending December 31, 1948, is \$5,000 greater than the amount recorded as of January 1, 1949, in the general ledger of Alpine Dairy.

Q. Now, as a matter of accounting principle, Mr. Gorans, ought the year-end figures of any business agree with the opening figures for the next succeeding year?

(Testimony of Gerald E. Gorans.)

A. Yes, the liability account, the capital accounts, should agree. The year-end figures should agree with the figures used at the beginning of the succeeding year.

Q. Now, as a general accounting principle, how should entries be made in the general ledger, or what identification should they bear in the general ledger?

A. Well, whenever an entry is made in the general ledger, the source of that entry should be noted in the general ledger, and the entry should bear a date, and what I refer to as the source—I mean, any cash disbursements, books and sales records and cash receipt books and like [1669] subsidiary records. Also, when you have a journal such as Mr. Taylor has here in the front of the records, which is a necessary set of records to accompany any general ledger, whenever an entry is posted from this to the general ledger, the reference back to the journal should also be made in the general ledger, and the place in which the entry is shown in the journal is posted in the general ledger, and should also be indicated on the journal so that you get a cross-reference, back and forth.

Q. Now, referring to the journal and ledger which you have before you, Plaintiff's Exhibit 272, were those rules which you stated followed in making entries into that journal?

A. There is no indication that they were followed.

Q. What is the effect of the failure to make

(Testimony of Gerald E. Gorans.)

those entries so far as interpretation of this book is concerned?

A. It makes it impossible to identify some entries that are in the books. You haven't any idea where they come from.

Q. Now, so far as posting year-end adjustments is concerned in the general ledger, will you state what a year-end adjustment is?

A. A year-end adjustment would be any adjustment [1670] made after the entry from subsidiary records for the month of December, or whenever the year-end would be, had been recorded in the general ledger. Usually such adjustments consist of accrued taxes, and so forth, which are subject to independent computation separate from any of the subsidiary records.

The other item would be depreciation which is computed independently from any of the subsidiary records. Those items are items of expense, proper items of expense, and should be recorded in the general ledger at either December 31 or, in some companies, it is recorded every month.

Q. Now, were the year-end adjustments as a matter of fact posted in Plaintiff's Exhibit 272, Mr. Taylor's Alpine Dairy ledger?

A. They generally were not posted.

Q. Now, returning from Alpine Dairy to Issaquah Creamery, on your examination, did you find any indication that cash on hand had ever been reconciled for the years 1945 through 1949?

A. No.

(Testimony of Gerald E. Gorans.)

Mr. Cox: Objected to as repetitious.

The Court: It was covered generally. I don't know that it was covered to any specific corporation.

Mr. Brody: Well, there the question has been [1671] answered, your Honor, and I will pursue that no further.

Q. (By Mr. Brody): Did you specifically, Mr. Gorans, reconcile cash on hand for December 31, 1949? A. Yes.

Q. And what was your determination on this reconciliation?

A. That the cash on hand, as shown in the general ledger was actually in excess of the physical cash on hand at December 31, 1949.

Q. Now, I hand you Plaintiff's Exhibit 271, which is a ledger of Issaquah Creamery covering the year 1949. Will you find your entry for cash on hand for December 31, 1949, in Exhibit 271?

A. Yes.

Q. What is that entry?

A. Well, the—it is not an entry, it is a balance, and the balance for cash on hand is \$28,745.46.

Q. And on your reconciliation, what do you find to be the actual amount of cash on hand on that date?

A. I think there is an exhibit in evidence that shows exactly.

Q. I will show you Defendants' Exhibit A-41 which Miss Krall identified as her record for cash for [1672] December, 1949. What do you determine

(Testimony of Gerald E. Gorans.)

from that to be the actual amount of cash on hand, December 31, 1949?

A. The actual amount of cash on hand was \$24,002.78.

Q. What is the difference between this figure for cash on hand that Miss Krall shows in Exhibit A-41 and the entry as shown in Mr. Taylor's ledger 271? A. The difference is \$4,742.68.

Q. In which accounting record does the greater sum appear? A. In the general ledger.

Q. And what is the effect of the inclusion of this greater sum in the general ledger?

A. It results in an overstatement of income by \$4,742.68.

Q. For what accounting period?

A. It depends upon the period that this difference has accumulated over. It could affect several years.

Q. Now, did you reconcile the cash in bank of the Issaquah Creamery? A. Yes.

Q. Well, will you state what your determination was?

A. We found that the general ledger was understated in the amount of \$4,497.41 at April 30, 1950.

Q. And what would be the effect of that understatement upon the income of Issaquah Creamery?

A. Well, it would result in an understatement of income in the amount that the bank account for the general ledger is understated.

Q. Now, going——

Mr. Cox: (Interposing) We move to strike the

(Testimony of Gerald E. Gorans.)

answer as going to a period not within the period of the Indictment; this was April 30, 1950.

The Court: It would seem inadmissible, Mr. Brody.

Mr. Brody: Well, I will attempt to clarify the situation.

Q. (By Mr. Brody): Did you make an attempt to reconcile cash in bank as of the year-end 1949?

A. We attempted it, but in view of the fact that many of the checks issued had never been recorded by number in any record, it was an impossible thing to undertake in that you could never be sure that you had all of the outstanding checks or you had a complete record of the checks issued.

Q. Now, were you able to determine any significant differences in the cash in bank between the year-end 1949 and the date of your audit?

A. No, we could not determine any significant difference between December 31, 1949, and April 30, 1950.

Q. In your opinion, based upon your examination, would or could the cash in bank have reconciled on December 31, 1949?

A. Well, there was no indication that the reconciliation had ever been made, and I doubt very much that it would reconcile, and just from the basis of the information that we found, it had been out of balance for a considerable period of time.

Q. In your opinion, would the reconciliation of cash in the bank on December 31, 1949, have shown any significant difference of the figure from \$4,-

(Testimony of Gerald E. Gorans.)

497.41 which you determined on your audit of April 30, 1950?

Mr. Moriarty: I object to the form of the question. And further, it is repetitious and speculative.

Mr. Cox: And immaterial.

Mr. Brody: It is a matter of opinion.

The Court: I don't see how it can be at all material as to a time in 1950. Now, of course, his opinion as to what it might have been December 31, 1949, that is one matter, but relating it to a period in 1950 I just don't see how it is admissible.

Mr. Brody: The purpose is this, your Honor: [1675] This is how I believe it becomes admissible. The witness has first testified that it was out of balance in April, 1950; that he made—attempted to make a reconciliation at the year-end in 1949; that he could not do this. That, however, he was able to determine, as a matter of opinion—his opinion—an expert opinion—that the accounts would not reconcile at the year-end and further, he gives it as his opinion that there would have been no significant difference in the amount of overbalance December 31, 1949, and the figure that was given as the 1950 figure. Admittedly, this is reached as a matter of expert opinion, and yet the witness is an expert, and he is able to use his 1950 figure to indicate the amount out of balance at the end of July, 1950.

The Court: I understand it was his estimate that it would have been out of balance \$4,497.41 as of December 31, 1949.

(Testimony of Gerald E. Gorans.)

Mr. Brody: Yes, that is correct.

Mr. Cox: That is immaterial, also.

The Court: It is his opinion.

Mr. Moriarty: The Government is of the opinion it is pure guess.

The Court: That can be broken down in cross-examination. He is an expert, and his opinion may be [1676] received and given such weight as the jury sees fit to give it, but it is purely his opinion.

However, I think you have to put the question.

Mr. Brody: I will restate the question, your Honor.

Q. (By Mr. Brody): In your opinion, Mr. Gorans, based upon your examination, would the amount——

The Court: (Interposing) Ask him what it would be.

Mr. Brody: Well——

The Court: Would that not be it?

Q. (By Mr. Brody): Can you state approximately the amount in which cash in bank would have been out of balance December 31, 1949?

Mr. Moriarty: I think we should first find out if he has an opinion as of December 31, 1949.

Mr. Brody: I think he already stated that.

Mr. Moriarty: He found there were a lot of checks he could not account for.

Mr. Brody: I will be happy to oblige Mr. Moriarty. [1677]

Q. Do you have an opinion, Mr. Gorans, as to

(Testimony of Gerald E. Gorans.)

whether cash in bank was in balance December 31, 1949, or not?

A. There is no indication that it could have been possibly in balance at that time.

Q. Is it your opinion that it was not?

A. It is my opinion it was not.

Mr. Cox: Does he have an opinion as to the amount of imbalance December 31, 1949?

Mr. Brody: I adopt the question.

The Witness: I am afraid I cannot answer that question.

I don't know what you mean by "imbalance".

Mr. Keesling: You mean out of balance.

Mr. Brody: I will take care of the questioning again.

Q. (By Mr. Brody): Now, Mr. Gorans, is it your opinion that the amount by which cash in bank would not have reconciled on December 31, 1949, would have been significantly different from \$4,497.41?

Mr. Cox: I object.

Mr. Moriarty: I object.

The Court: The Court will sustain the objection. [1678]

Q. (By Mr. Brody): Can you state the approximate amount by which you believe cash in bank would have been out of balance December 31, 1949?

Mr. Moriarty: Same objection.

The Court: Objection sustained.

Mr. Gorans, have you an opinion as an expert

(Testimony of Gerald E. Gorans.)

as to the amount the cash was out of balance December 31, 1949?

The Witness: All I can say is I am sure it was out of balance, but I couldn't tell you the amount.

Mr. Brody: We will proceed to the next subject.

Q. (By Mr. Brody): Did you examine the accounts payable of the Issaquah Creamery Company, Mr. Gorans? A. Yes.

Q. And did you make a reconciliation?

A. Yes, I did.

Q. As of what date?

A. As of December 31, 1949.

Q. What was your finding?

A. I found that the general ledger balance for accounts payable, December 31, 1949, was in excess of the actual liabilities by \$56,504.85.

Q. Now, what would be the effect of such a difference between the general ledger and the actual [1679] accounts payable as you found them upon the income of Issaquah Creamery?

A. It would be an understatement of income in the amount of \$56,504.85.

Q. Did you ask Mr. Erickson if the accounts payable had ever been reconciled?

A. Yes, I did.

Q. And did he thereafter volunteer to you any information concerning the accounts payable?

Mr. Moriarty: Objected to as hearsay.

The Court: It appears to be inadmissible.

Mr. Brody: Well, your Honor, it is a statement made by Mr. Erickson, one of the defendants.

(Testimony of Gerald E. Gorans.)

The Court: Yes, but this is not the Government's case.

Mr. Moriarty: That is cross examination.

Q. (By Mr. Brody): Now, in your examination, Mr. Gorans, did you attempt to reconcile the account for milk drafts? A. Yes, I did.

Q. And what was your determination?

A. I found that this was out of balance by \$9,-212.28, but this was again April 30, 1950.

Mr. Brody: The answer will be stricken then again, your Honor. [1680]

The Court: The answer may be stricken and the Jury will disregard the last answer.

Q. (By Mr. Brody): Now, with regard to books and records of Alpine Ice Cream Company, Mr. Gorans, have you examined Defendants' Exhibit No. A-40, which Mrs. Wilcox stated were her cash records of Alpine Ice Cream Company for the month of October, November and December, 1949?

A. I have.

Q. And have you had made available to you her summary report for Alpine Ice Cream Company for those months? A. No.

Q. Have you made an effort to locate such reports? A. Yes, I have.

Q. Did you succeed in locating any of them for the year 1949?

A. I found the report for the month of July, 1949, but that is the only one.

Q. Now, are you able to determine from that re-

(Testimony of Gerald E. Gorans.)

port, Exhibit A-40, the amount of cash on hand on December 31, 1949?

A. Using this report, and the bank statement.

The Court: Is this admitted?

Mr. Brody: Yes, your Honor, this is A-40, [1681] your Honor.

The Clerk: Defendants' Exhibit No. A-47 marked for identification.

(Defendants' Exhibit No. A-47 marked for identification.)

Q. (By Mr. Brody): Now, showing you what has been marked as Defendants' Exhibit No. A-47, Mr. Gorans, can you identify that?

A. These are bank statements for Alpine Ice Cream Company, Incorporated, covering an account with Peoples National Bank of Washington, Main Office, for January, 1950, November, August, July and June of 1949.

Q. Can you state when you first saw Defendants' Exhibit for identification A-47?

A. When we commenced our work on Forster's Companies in 1950.

Q. And did you use A-47 for identification in the course of your audit? A. Yes, we did.

Mr. Brody: I will now offer A-47 for identification.

(Whereupon, there was a brief pause.)

Mr. Moriarty: We have no objection as to [1682] identification, but the document seems to be incomplete. It has several months in that year missing.

Mr. Griffin: We are not offering those.

(Testimony of Gerald E. Gorans.)

Mr. Keesling: I have no objection.

Mr. Cox: May I ask the witness some questions?

The Court: You may.

Mr. Cox: Did you attempt to discover the bank statements for the months that are missing?

The Witness: Yes.

Mr. Cox: And they are not available?

The Witness: And they are not available.

Mr. Cox: I notice these bank statements at the end of each month again have some handwritten figures in pen and ink.

The Witness: Yes.

Mr. Cox: Are those again figures on the statements when you received them?

The Witness: They were.

Mr. Cox: And you were advised they were in the handwriting of Mr. Erickson?

Mr. Keesling: I will object to anything he was advised.

Mr. Cox: I will ask him this question.

Did you compare the figures in pen and ink on the bank statements with the month-end figures for the corresponding periods in any of the records kept by Mr. [1683] Erickson?

Mr. Brody: I will object. That doesn't go to identification, some question contained therein.

The Court: Ask if he knows what those are.

Mr. Cox: Do you know what these figures are?

The Witness: I think they are just totals of figures appearing on the statements themselves.

(Testimony of Gerald E. Gorans.)

Mr. Cox: That is, they are totals derived from the statements?

The Witness: That is right.

Mr. Brody: I might ask further.

Q. (By Mr. Brody): Mr. Gorans, does your testimony concerning these bank statements refer to anything but the printed figures thereon?

A. No, only the printed figures.

Q. Will it refer to any pencil or pen and ink figures added thereon? A. No.

Mr. Brody: We will offer it only for the typed matter on them, your Honor.

Mr. Cox: We object on the same grounds previously stated, irrelevant and immaterial. So far as we are concerned, the Government has relied on nothing in its case with respect to the Alpine Ice Cream Company other [1684] than the proof of investment for purpose of computation of net worth.

Therefore, it appears to us that this and any other testimony by the witness with respect to the accounting record of Alpine Ice Cream Company is irrelevant.

Mr. Brody: I believe this is the same objection, your Honor, raised previously.

Mr. Cox: Yes, it is.

The Court: Have you any objection to the figures in general?

Mr. Cox: Yes, we also object to the figures in January, 1950, respectively, that apply to the banking transactions in 1950. I don't know whether that

(Testimony of Gerald E. Gorans.)

statement simply reflects December or not.

The Court: I don't know what it purports to cover. If it covers transactions for—within the period of the indictment, I would admit them.

Mr. Brody: Well, your Honor——

The Court: (Interposing) Or, if it is not and just for the balance at the beginning of the statement——

Mr. Brody: (Interposing) If I am correct in recalling the indictment, the indictment refers to the filing of tax returns in 1950. Now—— [1685]

The Court: (Interposing) Do these affect the year?

Mr. Brody: My only purpose in using these statements are to show transactions which occurred in the ending of 1949, and if there is any objection for 1950, we will offer through December 31, 1949.

The Court: You are offering them for the transactions?

Mr. Brody: For the year 1949.

The Court: For the year 1949.

The Court will overrule the objection, the general objection heretofore made.

Mr. Cox: Yes.

The Court: And I take it there is no special objection other than that?

Mr. Cox: No, your Honor.

(Defendants' Exhibit No. A-47 admitted in evidence.)

The Court: So long as it is related to the year 1949.

(Testimony of Gerald E. Gorans.)

Mr. Cox: I think the additional objection that perhaps appeared in a number of our other objections is that again this is not going into matters which we regard as a proper defense to the Government's case, but going again into the financial affairs of a separate corporation [1686] whose single tax returns are not here in question.

The Court: I don't recall. This company was owned by Mr. Forster?

Mr. Brody: Wholly owned.

The Court: Wholly owned?

Mr. Brody: Correct.

Mr. Cox: But it is a corporation and not an individual proprietorship, and not on the income tax of Mr. Forster for 1949.

The Court: Objection overruled.

Q. (By Mr. Brody): Now, Mr. Gorans, using A-40 and A-47, can you determine the cash actually on hand as of December 31, 1949? A. Yes.

Q. Would you state that amount?

A. Cash actually on hand was \$1,978.75.

Q. Now, I will show you Plaintiff's Exhibit 276 which are the general ledger sheets of Alpine Ice Cream Company for the year 1949.

Will you state the figure for cash on hand shown on December 31, 1949, in Exhibit 276?

A. There is a negative balance here of \$1,817.89.

Q. Now, what is the difference between the actual figure for cash on hand of Alpine Ice Cream Company, [1687] December 31, 1949, which you have determined from Mrs. Wilcox's cash records,

(Testimony of Gerald E. Gorans.)

and the bank statements and the figures contained in Mr. Taylor's ledger?

A. There is a difference of \$3,796.64.

Q. Which is the greater amount?

A. The amount appearing on the office cash sheets.

Q. And what is the effect on income of the difference between the figures shown in the general ledger and the actual figure as determined by you?

A. It results in an understatement of income in the amount of \$379—\$3,796.64.

Mr. Brody: Your Honor, I believe it is slightly past four o'clock.

The Court: Ladies and Gentlemen of the Jury:

We will now recess for the day, and the Court calls your attention to the admonition given you on these occasions and asks that you heed those precautionary remarks on this occasion. You may now be excused until tomorrow morning at ten o'clock.

Mrs. Davis, I understood that you were not feeling too well. Is that right?

A Juror: I think I will be all right.

The Court: We hope you will be on hand tomorrow morning. [1688]

A Juror: Thank you.

(Whereupon, the Jury retired from the courtroom.)

The Court: You have a matter, Mr. Cox?

Mr. Cox: Yes, if the Court please, I wonder if Mr. Bell could make available in the Clerk's office for the balance of the afternoon and before Court

(Testimony of Gerald E. Gorans.)

opens in the morning, Defendants' Exhibits A-33 through A-46 and Plaintiff's Exhibits 271, 272, and 276, so that we can examine them in preparation for cross-examination?

The Court: As far as I am concerned, that is agreeable. Is there any objection to that?

Mr. Brody: No objection.

The Court: We have some matters here right after now, but it will just be a short time.

Mr. Cox: We will wait on them.

The Court: This trial will be recessed until tomorrow morning at ten o'clock. Court will remain in session.

(Whereupon, at 4:04 o'clock p.m., March 18, 1954, a recess was had in the within-entitled and numbered cause until 10:00 o'clock a.m. March 19, 1954.) [1689]

The Court: I understand that Mr. Erickson was held up on account of the bridge.

Mr. Keesling: The bridge was held up and they couldn't cross it, and I told him to make allowances so that he could go around hereafter.

The Court: You may call the Jury.

I notice Mr. Holtberg has been sitting at the table here. Do Counsel have any objection? It was raised once.

Mr. Griffin: I think not.

Mr. Moriarty: Mr. Keesling might have.

Mr. Keesling: The Jury has been instructed.

The Court: If you haven't any objection, we will

just continue, but if you have, I assume you will raise it.

(Whereupon, the Jury returned to the courtroom.)

The Court: You may be seated. It is stipulated that the Jury and all defendants are present in the courtroom?

Mr. Moriarty: Yes, your Honor.

Mr. Griffin: Yes, your Honor.

Mr. Brody: Yes, your Honor.

The Court: You may proceed. [1694]

Mr. Brody: Your Honor, at this time, I will offer Plaintiff's Exhibit for Identification 15 which is the corporation tax return for the year 1949 of Alpine Ice Cream, not heretofore admitted, but previously identified.

Mr. Moriarty: What is the number?

Mr. Brody: Plaintiff's Exhibit for Identification 15, Alpine Ice Cream Company tax return for the year 1949.

Mr. Cox: We would object to it, if the Court please, on the grounds it is irrelevant and immaterial, and not related to a corporation in the Indictment, and not related to the income of Mr. Forster.

The Court: There is evidence in here as to Alpine Ice Cream apart from evidence of coming in the Defendant Forster's case?

Mr. Brody: Yes, and the Prosecution has put in the ledger, Plaintiff's Exhibit 276 of Alpine Ice Cream Company.

Mr. Cox: From which one of the witnesses?—I believe Mr. Marx testified to the investment figures used in the net worth calculation, if my recollection is correct.

Mr. Patten: That was the purpose of the two exhibits offered by the Government, to establish net worth [1695] computation.

The Court: And the items, of course, included in the net worth computation.

Mr. Patten: Yes, your Honor.

Mr. Brody: Yes, your Honor.

Mr. Cox: The items of investment.

Mr. Patten: And certain loans.

Mr. Cox: Yes, that is correct.

The Court: Is there evidence that this was wholly owned stock, or substantially so?

Mr. Brody: I believe it was wholly owned.

The Court: I believe it was so showed by counsel.

Mr. Cox: It was a corporation.

Mr. Brody: That Hans Forster was the sole shareholder.

The Court: Other than qualifying shares.

Mr. Brody: That is correct, your Honor.

The Court: The Court would overrule the objection. The Government has no objection.

There was no offer of the Government, was there?

(Plaintiff's Exhibit No. 15 admitted in evidence.)

(Whereupon, witness Gorans resumed the witness stand.) [1696]

(Testimony of Gerald E. Gorans.)

Q. (By Mr. Brody): Mr. Gorans, I will show you Plaintiff's Exhibit 276, ledger sheets of Alpine Ice Cream Company.

Did you, in the course of your examination, take a trial balance from the ledger of Alpine Ice Cream Company on December 31, 1949? A. I did.

Q. Was the general ledger in balance as of that date? A. No, it wasn't.

Q. How much was it out of balance?

A. \$27,000.

Q. I now hand you Plaintiff's Exhibit 15, the tax return of Alpine Ice Cream Company for the year 1949.

Now, would the negative cash balance of one thousand eight hundred seventeen dollars and eighty-nine cents, which appears on Exhibit 276, as cash on hand of Alpine Ice Cream Company on December 31, 1949—would that figure appear in the tax return? A. No, it does not.

Q. Are you able to determine from an examination of the tax return what figure was used as cash on hand in the tax return, Plaintiff's Exhibit 15?

A. Referring to the general ledger, in the amount showing the cash in the bank and cash on hand, I think I [1697] can.

Mr. Keesling: If the Court please, we cannot hear the witness.

Mr. Brody: Raise your voice.

A. (Continuing) Referring to the general ledger, accounts on hand, and cash in the bank, I

(Testimony of Gerald E. Gorans.)

think I can determine how much is shown in the tax return.

Q. (By Mr. Brody): Will you make that determination, please?

The Court: You are referring to an exhibit?

The Witness: Yes.

The Court: What is the number there?

The Witness: Plaintiff's Exhibit 276.

(Whereupon, there was a brief pause.)

A. The amount shown on the tax return for cash is \$33,778.99; the amount shown as cash in the bank in the general ledger, \$33,596.88. There is a difference there of \$182.11, which we would assume must be cash on hand.

Q. Now, is that \$182.11 for cash on hand, as used in the tax return, is that a positive or a negative figure? A. It is a positive figure.

Q. Now, what is the difference between the negative cash figure which appears on Mr. Taylor's ledger, [1698] Plaintiff's Exhibit 276, and the positive figure which was used in the income tax return for cash on hand?

A. The difference is exactly \$2,000.

Q. Now, referring to Plaintiff's Exhibit 276, Mr. Gorans, will you state of what kind of sheets that consists?

A. The general ledger sheets for Alpine Ice Cream Company. In addition, there are two sheets in the back that cover a journal kept by Mr. Taylor similar to the journal that is kept for Alpine Dairy.

(Testimony of Gerald E. Gorans.)

Q. And what was the purpose of those journal sheets, Mr. Gorans?

A. The purpose of them was to record the summary information from the records prepared by Mrs. Wilcox.

They are first entered in this journal, and then from the journal recorded in the general ledger.

Q. Now, referring you to the journal sheets in Mr. Taylor's journal, and ledger, Plaintiff's Exhibit 276, have you examined the journal entry for cash receipts as of December 31, 1949?

A. Yes.

Q. And what entries have you found there?

A. There are two amounts appearing here; one amount of \$2,000 and another amount of \$18,530.86.

Q. Now, have you examined the entry in Mr. Taylor's ledger, the ledger portion of 276, for cash receipts for December 31, 1949? A. Yes.

Q. And were both of the figures which you have just cited, included there? A. No.

Q. Was either of them included in the general ledger? A. Yes, one figure was.

Q. Which figure was that?

A. The \$18,530.86.

Q. Now, will you please examine in the journal portion of Plaintiff's Exhibit 276 the entry for sales on December 31, 1949?

Will you state what appears there?

A. There appears an amount of \$18,277.36, which has been changed to read \$20,277.36.

Q. Now, turning to Mr. Taylor's ledger portion

(Testimony of Gerald E. Gorans.)

of Plaintiff's Exhibit 276, will you tell us what figure is recorded as sales in that general ledger portion on December 31, 1949?

A. \$20,277.36. Here, again, it appears that the eighteen [1700] thousand dollar figure has been changed to twenty thousand.

Q. Now, would the difference of two thousand dollars between the figures in Mr. Taylor's journal for cash receipts and the figures in Mr. Taylor's ledger for cash receipts of Alpine Ice Cream Company on December 31, 1949, account for a portion of the amount by which the ledger was out of balance?

A. Yes, it would.

Q. For what portion of the amount would it account for?

A. It would account for two thousand dollars of it.

Q. And what portion of the amount out of balance would then be unaccounted for?

A. It would be \$25,000.

Mr. Brody: Would you mark this, please?

The Court: Defendants' Exhibit No. A-48 marked for identification.

(Defendants' Exhibit No. A-48 marked for identification.)

Q. (By Mr. Brody): Now, Mr. Gorans, handing you what has been marked for identification as Defendants' Exhibit No. A-48, will you examine it and see if you can identify it? [1701]

A. This is Mr. Taylor's work papers for Alpine

(Testimony of Gerald E. Gorans.)

Ice Cream Company, covering the period from June 1, 1949 through December 31, 1949.

Q. June 1, is that the initial date?

A. Yes.

Q. Now——

A. (Interposing) There are some May figures appearing in here also.

Q. Will you state what type of May figures appear?

A. There is a profit and loss statement here, which says May, 1949.

Q. Now, is there anything in that file in addition to work sheets?

A. There are some typed statements in here also; copies of typed statements.

Q. And have you examined the typewriting which appears on the work papers? A. Yes.

Q. Can you identify it?

A. It appears to be Mr. Taylor's handwriting.

Q. And when did you first see those work papers?

A. When we first went out to Issaquah Creamery Company to start our work back in 1950.

Mr. Brody: I will offer Defendants' Exhibit A-48. [1702]

Mr. Patten: No objection, your Honor.

(Whereupon, there was a brief pause.)

The Court: Can you proceed, Mr. Brody, while counsel is examining?

Mr. Brody: The remainder of my examination,

(Testimony of Gerald E. Gorans.)

your Honor, concerning this company concerns this document.

Mr. Cox: Could I inquire of the witness?

The Court: Yes.

Mr. Cox: Mr. Gorans, this file contains also certain work papers and other papers relating to Arctic Gardens, whose name was changed to Alpine Ice Cream Company, is that correct?

The Witness: As I recall, there are some schedules in there that include both Arctic Gardens and Arctic Ice Cream.

Mr. Cox: And there are some things from the bank relative to Arctic Gardens?

The Witness: I don't recall.

Mr. Cox: You perhaps can tell the Jury what it is. I don't know. Some kind of advice.

The Witness: It is a statement from Peoples National Bank advising Arctic Gardens that they owe \$50 in interest.

Mr. Cox: That apparently refers to Arctic Gardens, [1703] in the period prior to the change of name.

The Witness: No, this says for June 30, 1949, and the name was changed, I think, effective sometime in May.

Mr. Cox: In May?

The Witness: 1949.

Mr. Brody: Our purpose is to present the complete file, Mr. Cox. If you have any objection to that, we can withdraw it.

(Testimony of Gerald E. Gorans.)

Mr. Cox: You first stated you saw this in May, 1950?

The Witness: Yes.

Mr. Cox: Did you take possession of it at that time?

The Witness: It was in our possession. I didn't physically take it into my possession.

Mr. Cox: Was this among the papers later brought into this office rented in the 1411 4th Avenue Building?

The Witness: Yes.

Mr. Cox: Was this among the papers turned over by Touche, Niven, Bailey and Smart to Mr. Marx and Mr. Eppler in December, 1950?

The Witness: I doubt it, because there was a very limited number of papers in our possession turned over to Mr. Eppler and Mr. Marx.

Mr. Cox: We would have the same double objection [1704] to this, if your Honor please, namely that it is irrelevant and immaterial, and also that it was acquired in such a manner as to violate Mr. Taylor's privilege thereto because of Mr. Kachlein's double representation.

Mr. Brody: I move to strike the gratuitous remarks in addition to the objection concerning Mr. Kachlein.

The Court: The Court will instruct the Jury that remarks by Counsel are not to be considered in any manner as evidence, and those statements may or may not be true, but unless they are established by evidence apart from the statement of

(Testimony of Gerald E. Gorans.)

counsel, they are not to be considered by the Jury, whatsoever. They are matters stated for the benefit of the Court in the ruling upon evidence.

The Court: The Court will overrule the objection. The exhibit may be admitted.

(Defendants' Exhibit No. A-48 admitted in evidence.)

Q. (By Mr. Brody): Mr. Gorans, handing you what has now been admitted as Defendants' Exhibit A-48, are there any figures contained in Defendants' Exhibit A-48 which would——

Mr. Brody: Let me strike that, and renew my question. [1705]

Q. (By Mr. Brody): Do you have before you Exhibit 276, the general ledger of Alpine Ice Cream Company for the year 1949? A. Yes, I do.

Q. Now, will you state what the sales figure is which occurs in the general ledger, Exhibit 276, for the month of May, 1949?

A. Sales figure is \$52,732.62.

The Court: Would you repeat that, Mr. Gorans?

The Witness: \$52,732.62.

Q. (By Mr. Brody): Now, does Exhibit A-48 contain a statement for the month of May, 1949?

A. Yes.

Q. And what figure is recorded for sales for May, 1949, on that statement?

A. \$27,736—it could be a "2"—\$736.62.

Q. Now, can you calculate for us the difference between the sales figure for Alpine Ice Cream Company for May, 1949, the difference between that

(Testimony of Gerald E. Gorans.)

figure appearing in Mr. Taylor's ledger and the entry for sales appearing in his statement?

A. Well, this figure appearing here on the statement is \$27,732.62 and in the general ledger, it is [1706] \$52,732.62; there would be a difference there of \$25,000.

Q. And which accounting record contains the greater sum?

A. The general ledger.

Mr. Keesling: We can't hear the witness.

The Witness: The general ledger contains the greater amount.

Q. (By Mr. Brody): Now, is the general ledger in balance for the month of May, 1949?

A. I didn't attempt to take off a trial balance as of May 31, so that I don't know whether it is in balance or not.

Q. And can you state whether or not the statement for May, 1949, of Alpine Ice Cream Company balances?

A. There appears a profit and loss statement which has sales and expenses. There is no balance sheet included with it.

Q. Now, directing your attention to the month of June, 1949, will you examine the figure for sales appearing in Mr. Taylor's ledger, Exhibit 276, for the month of June, 1949, and state what that figure is?

A. The sales for the month of June show \$40,-420.40, which shows accumulated sales for the month [1707] of May and June of \$93,153.02.

(Testimony of Gerald E. Gorans.)

Q. Now, does Exhibit A-48 contain a statement of Alpine Ice Cream Company for the month of June, 1949? A. Yes, it does.

Q. And what is the figure for sales which appears on that statement?

A. The figures for the period—what it states is “period” here—is \$68,153.02.

Q. Now, what is the difference between the figures for sales contained in Mr. Taylor’s ledger for June, 1949, and then the figures contained in the statement for June, 1949?

A. There is a \$25,000 difference.

Q. Now, will you please examine the general ledger, Exhibit 276, for the month of July, 1949, with reference to sales, and state what figure appears?

A. The cumulative sales through July 31, \$127,746.50.

Q. Now, will you examine Exhibit A-48 to determine if there is a statement there for the month of July? A. Yes, there is.

Q. And what is the sales figure in the month of July in that statement? A. \$102,746.50.

Q. What is the difference between the July sales figures [1708] as shown in Mr. Taylor’s ledger and Mr. Taylor’s statement?

A. Well, it is exactly \$25,000.

Q. Now, please examine the general ledger for the month of August, 1949, that is Exhibit 276, and state what figure appears therein for sales.

Mr. Le Sourd: If your Honor please, can’t we

(Testimony of Gerald E. Gorans.)

shorten this simply by a statement of the witness that the \$25,000 adjustment may continue through the end of the year?

The Court: Is that what you are doing?

Mr. Brody: Well, if I may ask a combined question of the witness, I can combine the remaining months in which it does appear in one question.

The Court: That is what you are suggesting?

Mr. Le Sourd: Yes. There is a \$25,000 adjustment, and I think he is trying to show it throughout the year. It is very simple.

Q. (By Mr. Brody): Now, does this discrepancy of \$25,000 between Mr. Taylor's ledger and his statements continue throughout the year 1949, Mr. Gorans?

A. It continues up through the month of November.

Q. And then there was such a difference in the months of August, September, October and November, is that correct, Mr. Gorans? [1709]

A. Yes.

Q. Now, referring to the month of December, 1949, what figures for sales is contained in the ledger, Exhibit 276, for the month of December?

A. The sales for the month of December were \$20,277.36.

Q. And does Exhibit A-48 show a statement for that month? A. Yes, it does.

Q. And what are the sales as shown on the statement?

A. Well, the statement shows accumulative sales

(Testimony of Gerald E. Gorans.)

for the year and accumulative sales for the year in the general ledger was \$260,040.73.

The work papers contain a trial balance in which a sales figure of \$235,040.73; and immediately above that there has been \$25,000—there is a figure of \$25,000 included in there. It would appear it has been added to that.

Q. And does the statement then agree with the general ledger as to the element of sales for December, 1949?

A. There is another statement in which the sales are shown as \$260,040.73, which agrees with the amount shown in the general ledger. [1710]

Q. Now,—

The Court: (Interposing) Another statement in A-48?

The Witness: Yes; there are two statements for December 31, 1949, in here.

Q. (By Mr. Brody continuing): Now, will you please examine the general ledger, Exhibit 276, for December 31, 1949, to determine the amount of notes payable shown there?

A. The notes payable in the general ledger total \$102,250.00 at December 31st.

Q. Now, do you have before you Exhibit 15, the tax return of Alpine Ice Cream Company for the year ending 1949?

A. Yes.

Q. And what was the amount shown as Notes Payable on that tax return?

A. The tax return shows \$168,463.20 of notes payable.

(Testimony of Gerald E. Gorans.)

Q. Now, are you sure, Mr. Gorans, that you stated correctly the amounts of notes payable shown in the ledger?

A. There are certain figures appearing in the work papers here that are shown as Notes Payable, and they are included in a column headed Arctic Gardens [1711] and the figure appearing there is \$66,213.20.

However, that amount was not included in this general ledger. That figure combined with——

The Court: (Interposing) You are referring to A-48 now?

The Witness: Yes, sir.

A. (Continuing) ——the \$66,213.20 combined with other amounts appearing on this trial balance as notes payable of Alpine Ice Cream Company total \$193,463.20.

Q. And what is the difference between that figure and the figure shown as notes payable in the tax return?

A. The difference is \$25,000.

Q. Now, you have stated that the general ledger of Alpine Ice Cream Company was out of balance by \$27,000 on December 31, 1949.

Would that figure be apparent to anyone who only looked at the statement of the Company for that date?

A. Not the way the statement has been prepared, no.

Q. Now, did you reconcile the accounts payable

(Testimony of Gerald E. Gorans.)

of Alpine Ice Cream Company on December 31, 1949? A. Yes. [1712]

Q. Did the accounts payable reconcile with the general ledger? A. No, it did not.

Q. And by what amount did they fail to reconcile?

A. The general ledger showed a figure of \$1,-814.86 of accounts payable while the amount shown in the disbursement book on the combination accounts payable and disbursement book for this company December 31, 1949, was \$12,420.77.

Q. Did the general ledger therefore reflect an understatement or overstatement in the accounts payable?

A. It reflected an understatement of accounts payable.

Q. What is the effect, Mr. Gorans, of an understatement of accounts payable upon income?

A. It results in an overstatement of income.

Q. Now, Mr. Gorans, going on to Finstad and Utgard—

Mr. Cox: (Interposing) If the Court please, as long as Mr. Brody is going to a new subject, I would like to make sure of our understanding yesterday as to a continuing and standing objection to testimony of this sort as to items and companies not a part of the Government's case against Mr. Forster without our repeated objections. [1713]

Mr. Griffin: That is all stipulated.

The Court: And the Government agrees to that?

Mr. Moriarty: I think the Government will join

(Testimony of Gerald E. Gorans.)

in the objection if this will extend to other matters not relating to the Government's case in chief. They are merely explaining some other things that occurred but have no bearing on the issues.

The Court: Are you making an objection?

Mr. Moriarty: Well, of course, there is nothing—Mr. Cox anticipated Mr. Brody's statement and I was not going to join until your Honor asked, but we are going to join in objections if we are now going to Finstad and Utgard, as to whether their income tax returns were in balance or out of balance. The point is very clear in the evidence.

The Court: Well, at this time, Mr. Cox wanted to be certain he had an objection to the testimony that has gone in.

Mr. Cox: That that is in and that to come assuming it is of the same type and upon counsel's statement, we have reason to believe that is true.

The Court: There is only one matter in the last comment.

Mr. Cox: We would recognize that if Mr. Gorans [1714] is going to testify as to Finstad and Utgard, as to the payments to Mrs. Finstad that objection would not apply because certainly he is entitled to offer explanation and additional information about that item which is a part of the Government's case.

It seems to us, also, he may properly testify to the expenditures and checks of Finstad and Utgard which the Government established were made payable to Issaquah Creamery and not recorded on the books.

(Testimony of Gerald E. Gorans.)

Beyond that, we wish to have a standing objection to any further testimony about alleged deficiencies or inaccuracies in the books of Finstad and Utgard.

Mr. Brody: So that your Honor will be aware of the testimony, there will be testimony of Finstad and Utgard similar to that which Mr. Gorans has testified with respect to Alpine Ice Cream Company, Alpine Dairy and Issaquah Creamery.

The Court: If there is anything further, I assume the Government will object.

Mr. Moriarty: We are going to object.

Mr. Brody: Thank you.

Q. (By Mr. Brody): I will hand you, Mr. Gorans, Defendants' Exhibit A-26 which is the general ledger of Finstad and [1715] Utgard and now I will refer you to Defendants' Exhibit A-44, which were the monthly reports of Mrs. Maude Simonson.

Now, directing your attention to the inventory figure contained in the December, 1946 report of \$12,167.47, of which the first digit "1" is written in in pencil and then refer you to the report—the entry for December, inventory, on the succeeding month's report in which that figure appears type-written \$22,167.47, will you state——

Mr. Moriarty: Excuse me.

The Court: You haven't finished the question, have you?

Mr. Brody: Yes.

Q. (By Mr. Brody continuing): ——will you state if either of those two figures for inventory appears in the general ledger?

Mr. Moriarty: Objected to as immaterial.

(Testimony of Gerald E. Gorans.)

Mr. Cox: Objected to as immaterial and leading.

The Court: The last objection as to form is probably well taken.

That isn't your objection?

Mr. Moriarty: No.

Mr. Cox: I will withdraw my objection as to [1716] form and join in the objection as to materiality.

The Court: Does the Government wish to be heard on this?

Mr. Moriarty: If your Honor please, the purport of the examination this morning has been to establish that certain other inaccuracies occurred in the books and records of the Alpine Ice Cream Company.

It is now apparent that in every one of these companies, the evidence will tend not to meet the issues that are presented by the Government, but to add that there were other inaccuracies which to my mind are completely immaterial to the charges we have made, and proof that we have presented.

So far, the defense has not tread upon those matters. They have gone around the books and records to criticize the bookkeeping. It has been the Government's position that the books did not reflect the facts, and this is merely demonstrating it.

The Court: I will hear further from you in the absence of the Jury.

Ladies and Gentlemen of the Jury:

We will now take the mid-morning recess, and the Court cautions you and asks that you heed the

(Testimony of Gerald E. Gorans.)

admonition given you on similar occasions and asks that you heed it on this occasion. [1717]

You may now be excused.

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, argument was had by respective counsel, and the following proceedings were then had, to-wit:)

The Court: The Court will overrule the objection. We will take a ten-minute recess before we call the Jury.

(Whereupon, at 11:30 o'clock a.m. a recess in the within-entitled and numbered cause was had until 11:40 o'clock a.m. March 19, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

Mr. Cox: If the Court please, in connection with my remarks about not again asserting or moving for a severance at this time, I want the record to show that that is not in any way a waiver to our contention that we were well and are entitled to a severance.

I simply called the Court's attention to the situation without again making it.

The Court: It will be understood, I think, that you ask for a severance to start with, and are continuing.

We will call the Jury. [1718]

I will suggest, Mr. Brody, that on your examination you do it without summarizing.

(Testimony of Gerald E. Gorans.)

Mr. Brody: I will be glad to combine questions to the extent opposing counsel will permit it.

The Court: If you could, a bit, without referring to items in each transaction, it might save some time—somewhat along the line Mr. LeSourd suggested on one matter.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the courtroom?

Mr. Moriarty: Yes, your Honor.

Mr. Griffin: Yes, your Honor.

Mr. Brody: Yes, your Honor.

The Court: Do you wish to have the question read by the reporter?

Mr. Brody: Yes, your Honor, I would prefer it.

(Whereupon, preceding question was read by the Reporter.)

A. The figure——

Q. (By Mr. Brody): Will you first merely state if either does. [1719] A. Yes, it does.

Q. Now, which of those figures does appear in the general ledger?

A. The first figure of \$12,167.47.

Q. Now, showing you the tax return of Finstad and Utgard for the year 1946, Plaintiff's Exhibit 18, will you state what figure appears as year-end inventory in that exhibit?

Mr. Moriarty: Exhibit 18?

Mr. Brody: 18.

(Testimony of Gerald E. Gorans.)

A. \$12,167.47.

Q. (By Mr. Brody): Now, again calling your attention to Defendants' Exhibit A-44 and the inventory figure carried in the December 1948 report of \$10,674.10, over which the second digit is a pencilled zero, and the December inventory figure, \$14,-674.10 as carried in the succeeding month's report, does either of those inventory figures appear in the Finstad and Utgard ledger for the year 1948?

A. Yes.

Q. Which of those figures appears in the ledger?

A. The \$10,674.10 figure.

Q. Now, I will show you the tax return of Finstad and Utgard for 1948, Plaintiff's Exhibit 20.

Will you examine it to find the year-end inventory figure of Finstad and Utgard and state what figure appears there? A. The figure \$10,674.10.

Q. Now, again referring to A-24, Mr. Gorans, have you examined—pardon me, do you have Exhibit A-24 before you?

A. I don't believe so.

Q. It is a check register. A. No, I do not.

Q. Now, I hand you Defendants' Exhibit A-24, check register of Finstad and Utgard from February 1, 1947 to April 30, 1948.

Have you examined that check register to determine what, if any, bonus payments were made to shippers in the—for the year 1947? A. Yes.

Q. And will you read from the check register the entries covering such payments for the year 1947?

(Testimony of Gerald E. Gorans.)

Mr. Cox: When were they made?

Mr. Brody: I will have him state them and then he can state the dates.

A. The payments shown here in the check register was made January 19, 1948, and it shows here as bonus checks to patrons, 1947, check No. 6359—63 to 60 inclusive—total amount, \$2,139.55. [1721]

Q. (By Mr. Brody): Now, Mr. Gorans, I will hand you for your examination, Plaintiff's Exhibit 4, the individual income tax return of Hans Forster for the year 1948, and Plaintiff's Exhibit 5, the income tax return of Hans Forster for the year 1949.

Will you please examine the 1948 return to determine if it displays a capital loss for the year 1948?

Mr. Moriarty: What is the number of the exhibit?

Mr. Brody: Exhibit 4.

A. Yes, it does.

Q. (By Mr. Brody): In what amount?

A. Total capital loss of \$6,127.88.

Q. Now, was Mr. Forster entitled to carry over any portion of that loss to the year 1949?

A. Yes, he was.

Q. What portion?

A. The portion here on the returned capital loss paid over to 1949 of \$4,127.88.

Q. Against what would that capital loss carry-over be carried forward? Against what would it be charged in the succeeding year's return?

(Testimony of Gerald E. Gorans.)

A. It would be shown as a deduction in the [1722] succeeding year's return.

Q. And was there a capital gain in 1949 as shown on Plaintiff's Exhibit 5?

A. Yes, there was.

Q. In what amount?

A. Taxable amount of \$278.30.

Q. And was Mr. Forster entitled to a deduction arising out of a capital loss carryover?

A. Yes, he was.

Q. And was any portion of the 1948 loss carried forward? A. No, it was not.

Q. And what was the consequence of the failure to carry that forward upon the income tax for the year 1949 of Hans Forster?

A. He paid more tax than he would have had to pay had the operation loss carried forward—or capital loss carried forward been shown on the 1949 return.

Q. Now, upon what amount did he pay additional income; upon what amount did he pay additional income tax for 1949?

A. The amount of income that he paid additional income tax on was \$2,278.37.

Mr. Brody: Will you mark that?

The Clerk: Defendants' Exhibit A-49 marked [1723] for identification.

(Defendants' Exhibit A-49 marked for identification.)

Q. (By Mr. Brody): Now, I will show you

(Testimony of Gerald E. Gorans.)

what has been marked for identification as Defendants' Exhibit A-49.

Can you identify that?

A. It is a check on the Issaquah State Bank dated November 12, 1945.

Q. And can you identify the signature which appears thereon? A. Yes.

Q. As whose signature? A. Hans Forster.

Mr. Brody: I will offer Defendants' Exhibit A-49.

(Whereupon, there was a brief pause.)

Mr. Patten: No objection.

The Court: Is there any objection?

Mr. Keesling: No objection.

Mr. Cox: We would object to it on the ground it is irrelevant and immaterial.

Mr. Brody: This was a matter, your Honor, you will recall was brought out in the prosecution case. [1724]

The Court: Objection overruled. The exhibit may be admitted.

(Defendants' Exhibit No. A-49 admitted in evidence.)

Mr. Brody: May I read the check to the jury, your Honor?

The Court: You may.

Mr. Brody: This is a check dated, Issaquah, Washington, November 12, 1945, No. 2172, Issaquah State Bank, pay to the order of Mutual Life Insurance Company of New York, \$3,424.34, signed Hans Forster.

(Testimony of Gerald E. Gorans.)

Q. (By Mr. Brody): Now, I will show you, Mr. Gorans, Plaintiff's Exhibit 120, which is the check register of Hans Forster, and Evelyn Forster, Trust. Will you examine that check register and determine if the trust issued in the year 1946 issued any check in the sum of \$3,424.34?

A. Yes, it did.

Q. And will you state the entry relating to that check?

A. On April 1, 1946, there is a check written to Hans Forster for \$3,424.34.

Q. And by whom was that check written?

A. I would assume it was written by Mr. Taylor who was the trustee of the trust. [1725]

Mr. Cox: We move to strike the answer.

The Court: The answer may be stricken.

Q. (By Mr. Brody): Was the check written on the trust bank account? A. Yes, it was.

Mr. Brody: I would like to read one sentence from the trust agreement, Plaintiff's Exhibit 117.

The Court: Was it read before?

Mr. Brody: Your Honor, I am unable to say with certainty whether this sentence was read before.

The Court: You may proceed.

Mr. Brody: Reading from Paragraph 3-A on page 2 of the Exhibit:

"The trustees shall also have the right and power in their discretion to invest trust funds or any part thereof in any form of life insurance on the

(Testimony of Gerald E. Gorans.)

lives of Hans Forster and Evelyn V. Forster, or either of them."

Q. (By Mr. Brody): Now, I want to return for just one moment, Mr. Gorans, to Finstad and Utgard.

You have shown certain checks were made as bonus checks to shippers. Will you explain the significance [1726] of those checks?

Mr. Cox: Have you qualified Mr. Gorans as an expert in the dairy business?

Mr. Brody: Well, let me phrase the question in this manner:

Q. (By Mr. Brody continuing): Do those constitute accounts payable?

A. They would constitute an account payable as of December 31, 1947. Reading from the check register, it relates to 1947 and not paid until 1948, so it can be assumed from that that it would be an account payable as of December 31, 1947.

Q. And was any such entry carried under accounts payable in the ledger as of that date?

A. There is no separate amount agreeing with that figure recorded in the general ledger under accounts payable.

Q. And what is the figure for accounts payable as of that date?

A. There is a figure shown as January 1, 1948, of \$47,198.73.

Q. Does that complete your answer, Mr. Gorans?

A. Yes.

Q. Now, returning to the matter of the trust,

(Testimony of Gerald E. Gorans.)

I [1727] will show you Plaintiff's Exhibit 263, which is the journal of Alpine Dairy for the year 1947. Have you examined that journal to determine what checks of the Alpine Dairy were issued in the year 1947 in payment of rental to the trust of Hans and Evelyn Forster trust? A. Yes, I have.

Q. And how many checks were issued that year?

Mr. Cox: We would object to this as being utterly immaterial.

Mr. Brody: Your Honor, I think this would best be handled by an offer of proof in the absence of the jury.

The Court: If you might go to another matter now.

Mr. Brody: I will. I will at this time, your Honor, re-offer in evidence Defendants' Exhibits for Identification A-42 and A-43.

A-42 is the inventory book of the Renton Ice and Ice Cream Company covering certain periods prior to the Indictment.

A-43 is a tax return.

The Court: A-42 was admitted as to a period within the Indictment.

Mr. Brody: That is correct. I will re-offer it for further periods. [1728]

Mr. Cox: We desire to object.

Mr. Moriarty: We do, too. We join in the objection.

The Court: The Court sustained the objection before. I don't know of any reason why I should change the ruling.

(Testimony of Gerald E. Gorans.)

Mr. Brody: As to that, at the close as we conclude the portion of Mr. Gorans' testimony, that can be presented. I would like also to make an offer of proof relating to those exhibits.

Mr. Griffin: May I suggest the purpose of this offer is——

Mr. Le Sourd: (Interposing) If this is argument, it should be outside the Jury.

Mr. Griffin: I will not argue at all, I assure you. The purpose of this is on the same theory that over our objection you admitted in the Government's case matters prior to the year 1944, as bearing upon what was done during the Indictment period; that is the situation here—what was done in those years has a bearing on what followed.

The Court: I don't recognize it as the same.

Mr. Brody: I think the theory can be presented only on the offer of proof, which I will later offer.

Q. (By Mr. Brody): Now, Mr. Gorans, will you state in accounting terminology what internal control is?

A. I think Mr. Marx in his statement the other day very adequately covered it. It is a means of setting up checks, on various people who are handling the accounting information in order to determine that it is being recorded accurately and properly and it is considered necessary in any accounting system in order to assure anyone that the information is being properly recorded.

Q. Now, from your examination, will you state what, if any, internal controls you found at Issa-

(Testimony of Gerald E. Gorans.)

quah Creamery in the years 1945 through 1949?

A. There was practically no internal control in existence there.

Q. Now, will you state, Mr. Gorans, what is the principal duty and responsibility of the keeper of the general ledger?

A. Well, since the general ledger is the final book of account, whoever makes entries in the general ledger has the basic and primary responsibility to determine that the information recorded therein is correctly recorded, and that goes to the extent of reviewing the underlying data that is used as a basis for making entries in the general ledger to make sure that that information [1730] is properly recorded, and in a condition so it can be recorded in the general ledger.

Mr. Brody: Your Honor, that is the extent of Mr. Gorans' testimony I have to offer at this time with the exception of the offer of proof relating to the two matters we passed.

The Court: And then either after the Court sustains the objection or allows the testimony, then you have completed your examination.

Mr. Brody: With the Court's leave, there may be one or two matters following after discussion with co-counsel.

The Court: Are we in a position to go ahead with anyone else now, or not?

I take it, not.

Mr. Brody: I am prepared to go ahead with the offer of proof, and there may be considerable argu-

(Testimony of Gerald E. Gorans.)

ment upon it, and we could use the remaining time on this phase.

The Court: Unless you prefer to go ahead with cross-examination on some items, I presume it is best.

Mr. Patten: I would like to have the complete testimony of the witness before we start cross:

The Court: I will hear the offer of proof, then.
Ladies and Gentlemen of the Jury: [1731]

We will recess at this time until this afternoon. The Court calls your attention to the admonition given you on similar occasions and asks that you adhere to them on this occasion.

And, can we return at 1:30? Will it be inconvenient for the Jury to be back at 1:30?

(Whereupon, there was no reply to the Court's query.)

The Court: All right, then we will recess now and start in—we won't recess the trial now, but when we do recess, we will recess to 1:30 so that we will start a little earlier, and pick up the fifteen minutes we lost this morning.

You may now leave, and we will start at 1:30 so be here about five minutes ahead.

(Whereupon, the Jury retired from the courtroom.)

The Court: It is stipulated the Jury have left the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: All right, Mr. Brody.

(Testimony of Gerald E. Gorans.)

Mr. Brody: Your Honor, with regard, first, to the matter relating to Renton Ice and Ice Cream Company——

The Court: (Interposing) Those are the two [1732] exhibits you have offered?

Mr. Brody: Yes, sir.

The purpose of that testimony is as follows:

We have shown through the records of Finstad and Utgard that certain changes in even amounts, the amounts of four thousand dollars and ten thousand dollars, were made to the inventory records of that company. We propose to show by means of the inventory books that in the year—fiscal year ending 1943, a flat adjustment of one thousand dollars was made to the inventory of Renton Ice and Ice Cream Company, as shown by a comparison of the figure in the inventory book which your Honor has before him, and the figure carried in the general ledger and tax return, which is now before you and we further propose to show that in the year 1944, a flat adjustment of two thousand dollars was made to the inventory as shown by Exhibit A-42 for identification, the inventory book, and the check register, which we will propose to offer.

We do not have available and have not been able to locate the tax return for the fiscal year ending July 31, 1944.

Our theory is twofold.

The Court: Before you go into that, this [1733] has no relationship to a specific item that the Government offered?

(Testimony of Gerald E. Gorans.)

Mr. Brody: Insofar as the Government's case is concerned, the Government did go into the affairs of Renton Ice and Ice Cream Company for 1944 and showed distribution——

The Court: (Interposing) ——of certain items?

Mr. Brody: (Continuing) ——of salary, or surplus, or whatever it may be called, at the time——

The Court: (Interposing) This doesn't relate to that?

Mr. Brody: (Continuing) ——and inventory records would relate indirectly to the financial status of the company for the year ending in 1944 and the sums available for distribution after payment of taxes would have an effect on the tax liability of the company. The figures for the year ending July 31, 1943, do not appear directly to relate to an item brought in by the Government.

The Court: The Court will sustain the objection on that offer.

Mr. Brody: The second offer relates to the matter of the trust. We will attempt to show that by the trust agreement which is here in evidence, Mr. Taylor was one of the two co-trustees of the Hans and Evelyn Forster [1734] trust, that the monthly rental checks——

The Court: (Interposing) That is admitted, is it not?

Mr. Brody: Yes, your Honor. That the trust income was provided for by a lease, Plaintiff's Exhibit 118, and that \$500 per month was paid by Alpine Dairy to the trustees for rental of the trust

(Testimony of Gerald E. Gorans.)

property; that the monthly checks were made out in favor of L. Hicks Taylor, Trustee; and by the testimony of this witness, we will show that during the year 1947, of the 12 checks issued to the trustee during that year, only 10 of those checks were deposited in the trust bank account as shown by a record of deposits in the bank account which I have here and am prepared to offer into evidence: that a tracing—a search—for the other two checks whose amounts appear in the Alpine Dairy Journal have been unavailing and we are unable to state what happened to those checks.

We will then show in connection with that testimony by the testimony of Mr. Donaldson, a Vice-President of the Peoples National Bank and successor trustee in the Hans and Evelyn Forster trust, that a check was issued on March 10, 1950, in the amount of \$500 to L. Hicks Taylor as a trustee, was not deposited in the trust bank account and was, in fact, deposited [1735] under Mr. Taylor's hand endorsement to his own personal account in the Peoples National Bank.

The Court: What does that prove?

Mr. Brody: Your Honor, the basis of this offer of testimony goes to motive and intent.

Mr. LeSourd has brought in from his opening statement his theory of the case, and he stated that Mr. Taylor received a very small compensation for the work which he did for Mr. Forster. I believe he characterized it before the Jury as fifty dollars

(Testimony of Gerald E. Gorans.)

a month, and on one occasion he got a quart of ice cream.

The clear purport of the opening statement was to show that there would be no motive on the part of Mr. Taylor to assist in any supposed or alleged plan of tax evasion. Now, it is our theory of law that matters going to intent or motive are admissible, and the broadest possible latitude is given to the admissibility of such testimony.

The Court: Granted that that is the rule, that would apply in your case to Mr. Forster, but under what rule would you be permitted to introduce testimony as to the motive of the other defendants, of another defendant?

I assume——

Mr. Brody: (Interposing) Your Honor, the [1736] problem is similar to that which exists in the other testimony which has been given by Mr. Gorans. These are the facts which this case discloses.

If the record remains silent——

The Court: (Interposing) Still you are dealing with books and records which are very much a part of the issues involved here as to income, but you are not dealing with Mr. Gorans but with accounting and books and figures and in matters of character.

Mr. Griffin: I have one suggestion to make in that regard. Very frankly, I would reserve this matter for Mr. Taylor's cross-examination but I do

(Testimony of Gerald E. Gorans.)

think this very definitely,—these checks are drawn by Alpine, and if you look at the net worth statement, they increase Mr. Forster's investment in Alpine by the trust items. It is one of the items. Actually, now, so far as the Government is concerned, the evidence that is in, they claim that the full Alpine checks have increased Mr. Forster's net worth in Alpine by going to the trust.

Actually, they can either go further and claim that these checks didn't go to the trust and he concealed them himself, whereas we claim and can show that the checks—assume it was all of them—it happens to be only one, but it was just as important in its effect—that all of them went to Mr. Taylor. Forster [1737] hadn't increased his net worth then, at all, as the Government charges in its net worth statement, and Forster didn't get in on the benefit of it. Taylor got it. It just happens that Taylor was a Defendant, and it wouldn't make any difference.

The Court: This is not an error in bookkeeping, as I take it. It is not offered as such?

Mr. Griffin: We offer it simply as a fact. I would assume Mr. Taylor has explanations for these things. I would proceed on that basis. He is defending. I don't know. The chips just have to fall. It is an explanation of a sum the Government is using in the net worth of Mr. Forster. At least one check we can establish went into the trustee's personal bank account. Two checks are missing. Every item of this affects income eventually, and remember,

(Testimony of Gerald E. Gorans.)

the Government is off sixty thousand dollars in its computation of income in this courtroom as compared with this Indictment.

Mr. Maxwell: So far as I know, your Honor, I don't know of any relation that these checks might have to the net worth at all.

The Court: What Mr. Griffin is saying—he is approaching it from this aspect—the offer of proof is made on a different basis than I understood it. Even though you take the position you now suggest, Mr. Griffin, [1738] it seems to me that the testimony is so colored with the other purpose, that it might make it inadmissible for the possible legitimate purpose.

When I say “legitimate,” I mean admissible.

Mr. Brody: Your Honor, if I could state one other ground on which I believe the testimony is admissible: it goes to the heart of Mr. Forster's defense, and as is clearly apparent at this time, and will be made more apparent in further testimony, the defense of Mr. Forster in this case is that he entrusted his business affairs to this accountant.

The Court: Well, it could be.

Now, remember, we are admitting a lot of this testimony on the representation, of course, in the opening statement that Mr. Forster, of course, was unfamiliar with the books.

Mr. Brody: That will be shown, your Honor, by the testimony of my next witness.

The Court: It could be that some of the matters might be admissible, but at this point, I wouldn't

(Testimony of Gerald E. Gorans.)

want to anticipate or necessarily depend—not that I question any representation that any counsel make, but I think some of these matters should have more than representation if they are to be admitted.

That covers the two offers? [1739]

Mr. Brody: That covers the offers, your Honor.

The Court: Well, at this time, where the record now stands, the Court would deny them.

Mr. Brody: And we may have a few short matters.

The Court: At 1:30?

Mr. Brody: Yes, at one-thirty.

The Court: At this time, this case will be recessed and the Court has a short matter.

(Whereupon, at 12:18 o'clock p.m. a recess was had in the within-entitled and numbered cause until 1:30 o'clock p.m. March 19, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed.

Q. (By Mr. Brody): Mr. Gorans, I believe you

(Testimony of Gerald E. Gorans.)

testified that the reconciliation of the accounts payable as of December 31, 1949, of Issaquah Creamery Company showed it was out of [1740] balance \$56,504.85.

Will you state what the principal items which you determined to be the cause of that?

A. The accounts payable to Consolidated Dairy in the amount of \$51,578.76 which had been recorded twice, and the check to Stevenson in the amount of \$18,859.50, was discovered at the same time.

Q. And by whom were the discoveries made?

A. They were made by me in my examination of the records.

Q. And what action did you take upon making that discovery?

A. Well, I immediately discussed those with Mr. Erickson, to determine why they had been made, and when they had been made, and whether or not there were any other such items in other companies.

Q. And did you personally take any further steps with regard to the accounts payable as of that date?

A. Well, I followed through, until I got all the information that Mr. Erickson apparently had about these accounts payable from him.

Q. Did you communicate with anyone concerning that account—

Mr. Moriarty: Objection. [1741]

The Court: The question here is whether he communicated?

(Testimony of Gerald E. Gorans.)

Mr. Brody: That is correct.

The Court: He may answer, yes or no.

A. Yes.

Q. (By Mr. Brody): With whom?

A. I advised Mr. Tremper immediately as soon as I found these items.

Q. And why did you so advise him?

Mr. Moriarty: Objected to as immaterial.

The Court: I don't know the purpose. If you represent it as being material or preliminary to something——

Mr. Brody: The purpose for which it is offered, your Honor, is to show the significance of this item brought in by the Government to the accountant who made the examination. The fact that I have asked him if he communicated with anyone he calls the senior partner in his firm—his testimony is he called immediately upon discovering it——

Mr. Moriarty: It is long after the thing occurred—the discovery.

Mr. Brody: The discovery was subsequent to the fact. [1742]

Mr. Moriarty: It is immaterial.

The Court: I will sustain the objection.

Q. (By Mr. Brody): Now, have you made any examination from the books and records of Alpine Dairy and Issaquah Creamery as to the amounts of money expended during the years 1945 through 1949 for bookkeeping and clerical personnel at those two offices?

Mr. Moriarty: Objected to as immaterial.

(Testimony of Gerald E. Gorans.)

The Court: Objection overruled.

A. I examined the payroll records for the years covered by the indictment for the months of May and June of each year, as they were fairly typical months.

Q. (By Mr. Brody): And what did you determine in May and June of 1945 to be the expenditure for those purposes of Alpine Dairy?

A. In May, the total wages paid to office employees was \$2,563.00; in June, it was \$2,475.00.

Q. Now, taking those two months as a median for the year, what would be the total bookkeeping and clerical salaries paid by Alpine Dairy during the year 1945?

Mr. Moriarty: We renew our objection, your Honor. [1743]

The Court: Objection sustained.

Mr. Brody: Your Honor, the purpose of this testimony would be to show that extensive expenditures were made on the part of the Defendant Forster for clerical and bookkeeping assistance. That is something which, so far as the evidence in the case is concerned, is simply buried in the books. It goes clearly to his intent.

In other words, the fact that he was expending substantial sums——

The Court: (Interposing) I presume, if you want to go through the books and bring it out—I don't think testified to in this fashion it is proper—in other words, if you wish to go through every

(Testimony of Gerald E. Gorans.)

month and think it is material, and want to give every item——

Mr. Brody: (Interposing) Your Honor, this is a matter such as your Honor inquired about this morning, as to whether any of this testimony could be presented more readily.

Mr. Gorans has made a study of this subject. I can present him with the books, and there is no question his examinations are parallel to the books, and he can state in summary form what his findings are.

The Court: If he wishes to go over that tonight and give the answer in the morning, he may. [1744]

Mr. Brody: Then, when he concludes his testimony, we will wish to reserve that right to put in that testimony through Mr. Gorans.

The Court: Yes.

Mr. Brody: Your Honor, will the same ruling apply to Issaquah Creamery—these questions now—as to Alpine?

The Court: If you wish, as to clerical and book-keeping expenses?

Mr. Brody: As to clerical and bookkeeping salaries for the indictment years.

The Court: I don't know as to clerical, unless it is part of the bookkeeping or accounting portion or activities of the people involved.

Mr. Brody: Well, the functions were mingled. At a place such as Issaquah Creamery, it is difficult in any way to state for sure.

(Testimony of Gerald E. Gorans.)

Mr. Moriarty: We would therefore, renew our objection more forcibly.

The Court: Well, if you wish to break it down on cross-examination, you may do so, and I suggest to the witness that in going over the figures, break it down so that you have it all grouped, clerical, bookkeeping, clerical, auditing, so that you will be able——

The Witness: (Interposing) I can clear that [1745] up now if you would like.

The Court: Do you know it?

The Witness: Yes.

The Court: All right.

The Witness: There is no segregation in the accounting records between clerical and bookkeeping, but it gets down to your basic accounting records that you start with. Your start with clerical employees working on them, and it is built up from the clerical work that is done, so that you get down to the people working on accounting records, or information; whether down to the sales slips or not is still accounting work and it results in the final figures that go into the general ledger.

Mr. Brody: Your Honor, the witness will prepare his testimony and be subject to intensive cross-examination, I am sure, by Mr. Moriarty.

Q. (By Mr. Brody): Now, have you made a study, Mr. Gorans, of the sums paid by Mr. Forster's enterprises for accounting as distinguished from bookkeeping services during the indictment years?

(Testimony of Gerald E. Gorans.)

Mr. Moriarty: Same objection.

The Court: The question now is whether he——

Mr. Brody: (Interposing) Whether he has made [1746] such a study.

The Court: Yes. Objection overruled.

A. Yes.

Q. (By Mr. Brody): Now, can you state to whom those sums were paid?

A. They were paid to Mr. Taylor.

Mr. Moriarty: We renew our objection, if your Honor please.

The Court: You are speaking of accounting?

Mr. Brody: That is right, accounting services, and asking to whom those sums were paid.

The Court: Objection overruled.

Q. (By Mr. Brody): Will you state your answer, Mr. Gorans?

A. They were paid to Mr. Taylor.

Q. And can you state how much was paid in the year 1945 to Mr. Taylor?

Mr. Le Sourd: By which company?

Mr. Brody: I can have Mr. Gorans state in detail.

The Court: This is by all companies involved?

Mr. Brody: That is correct; by all Hans Forster enterprises.

Mr. Le Sourd: There were some that haven't [1747] even been mentioned here, and I think the witness ought to cite for each company what it was.

Mr. Brody: The witness can state the company and the amount paid.

(Testimony of Gerald E. Gorans.)

Q. (By Mr. Brody continuing): Will you go ahead for the year 1945, Mr. Gorans?

A. Alpine Dairy, \$600; Issaquah Creamery, \$600; Arctic Gardens, Incorporated, \$200; Finstad and Utgard, \$600; Apex Farms, there was nothing paid there in 1945; Simonson and Forster, \$450; and Renton Ice and Ice Cream Company, it was \$1200.

Q. Are those all the—is that all the compensation paid in 1945 to Mr. Taylor?

A. So far as I could determine.

Q. And what was the total of the sums paid to Mr. Taylor in 1945? A. \$3,650.

Q. Now, will you state in detail the compensation paid to Mr. Taylor in the year 1946?

A. Alpine Dairy, \$600; Issaquah Creamery, \$600; Arctic Gardens, \$600; Finstad and Utgard, \$600; Apex Farms, \$625; Simonson and Forster, Renton Ice and Ice Cream Company, Hub City Drug, \$200.

Q. What was the total amount paid to Mr. [1748] Taylor in the year 1946?

A. In addition to these amounts, there was the Washington Athletic Club bills paid for Mr. Taylor by either Alpine Dairy or Issaquah Creamery Company.

Q. Do you know the sum?

A. And that amounted to \$56.94 in 1946.

Q. And what is the total of these sums in the year 1946? A. \$5,081.94.

Q. Now, will you please state in detail for the

(Testimony of Gerald E. Gorans.)

year 1947 the compensation that was paid by Mr. Forster's businesses to Mr. Taylor?

A. Alpine Dairy, \$600; Issaquah Creamery was \$600; Arctic Gardens \$650; Finstad and Utgard, \$600; Apex Farms, \$600; Simonson and Forster, \$600; Hub City Drug, \$600; Renton Ice and Ice Cream, \$1200; paid to the Washington Athletic Club \$102.07.

Q. What was the total of these payments by Mr. Forster and his business enterprises for the year 1947 to Mr. Taylor? A. \$5,552.07.

Q. Will you state in detail what the payments were by Mr. Forster and his businesses in the year 1948?

A. Alpine Dairy, \$600; Issaquah Creamery Company was \$600; Arctic Gardens, \$500; Finstad and Utgard, \$600; [1749] Apex Farms, \$600; Simonson and Forster, \$600; Hub City Drug, \$600; Renton Ice and Ice Cream Company, \$600; payments to the Washington Athletic Club, \$151.82.

Q. And what is the total of those payments by Mr. Forster and his businesses to Mr. Taylor for the year 1948? A. \$4,901.82.

Q. And will you state in detail what the payments were by Mr. Forster to Mr. Taylor for the year 1949?

A. Alpine Dairy was \$600; Issaquah Creamery Company, \$600; Alpine Ice Cream, \$350; Arctic Gardens, \$450.17; Finstad and Utgard, \$600; Apex Farms, \$600; Simonson and Forster, \$600; Hub City Drug, \$600; Renton Ice and Ice Cream, \$900;

(Testimony of Gerald E. Gorans.)

payments to the Washington Athletic Club, \$200.70.

Q. And what was the total for 1949 of the sums paid by Mr. Forster businesses to Mr. Taylor for accounting services? A. \$5500.87.

Q. Now, have you made a study, Mr. Gorans, to determine the amount of income taxes that Mr. Forster and his corporations have paid to the United States Government through the year 1949?

Mr. Moriarty: Objected to as immaterial.

The Court: Are you covering the total [1750] period from the beginning of payment of taxes?

Mr. Brody: I will first offer in evidence the total figure, your Honor.

Mr. Moriarty: Are there any——

The Court: Unless restricted to the years involved in the indictment, I don't think it is material.

Mr. Moriarty: And the companies involved.

Mr. Brody: Well, so far as the companies involved in the indictment are concerned, the books and records of numerous companies are now in evidence, including Finstad and Utgard, Simonson and Forster, Renton Ice and Ice Cream Company—companies which are not named in the indictment.

Within the scope of your Honor's ruling, Mr. Gorans can give detailed information concerning the amount of Federal Income Taxes paid. It is our contention that insofar as books and records have been submitted and reflect payments of income taxes, that those payments should be admissible at this point.

(Testimony of Gerald E. Gorans.)

The Court: On the period covered by the indictment.

Mr. Brody: On the period covered by the indictment, your Honor.

Mr. Moriarty: But any returns that are material, the Government has as evidence and they are the [1751] best evidence.

Mr. Brody: I do not know if the Government has submitted all returns for the companies whose books and records are now in evidence.

Mr. Moriarty: In any event, the question should be confined to the Issaquah Creamery Company and Mr. Forster's personal returns. Otherwise, they will be producing other matters not relating to the issue.

The Court: Only as to Mr. Forster now, isn't it?

Mr. Brody: The question will go to Mr. Forster and Mr. Forster's business enterprises.

The Court: I don't know that it is material apart from Mr. Forster and the Issaquah Creamery Company. Business enterprises might—many of them, of course, are included in his personal income tax but——

Mr. Brody: (Interposing) Alpine Dairy is. However, numerous others are corporate organizations.

The Court: Well, I think it is material only insofar as Mr. Forster personally is concerned, and his personal income tax is the subject of the indictment, and likewise, Issaquah Creamery.

Mr. Brody: Are we not entitled to show the [1752] total amount of taxes paid by companies

(Testimony of Gerald E. Gorans.)

whose books and records the Government has offered in evidence as showing from those books and records the amount of income tax paid by Mr. Forster?

The Court: I don't see the materiality of it.

Mr. Brody: Well, the probative value from our standpoint is this:

The sum will naturally be a very large sum of money. Hundreds of thousands of dollars.

The question that we have before us in this case is a question of intent. Now, if a taxpayer—and we have submitted to the Court our position that Mr. Forster was not highly skilled in matters of book-keeping, accounting, tax returns, and tax procedure and tax practice—if a taxpayer pays very large sums of taxes and executes returns and sees the money go out in payment of those taxes, we urge that that reflects directly upon the intent of the taxpayer and as to whether or not he believes that the amounts of money that he is paying both personally and through corporations which he owns or controls are very material to the issue in this case.

Mr. Griffin: Upon that, if the Court please, the figures are in evidence, and we would be entitled to read them to the Jury. This is simply reaching the [1753] ultimate shortly and briefly, because I stated in my opening statement the taxes paid by these Forster enterprises and the Government put the evidence in the record. We are summarizing them over all, and I say, in all fairness, it is much simpler than to burden the Jury with the reading

(Testimony of Gerald E. Gorans.)

from the various documents in evidence, and then adding up the total taxes paid, and it all goes to the matter of intent.

Mr. Moriarty: It is not an issue, if your Honor please, as to these other companies, and we do not propose to put anything further about what happened to their income taxes and their returns.

Mr. Griffin: They have introduced from the other companies, evidence affecting intent of Mr. Forster. That is the only purpose, to affect intent in not paying taxes. The books are in evidence, and we propose to show, if we may, and I know, in theory at least, we could read every item in a book in evidence to the Jury that they have put in. We don't do those things that way, and I appreciate the Court would not permit it.

The Court: Insofar as the answer may be considered as representative of what appears in evidence from an exhibit, that might be done.

Mr. Moriarty: It is not the best evidence. Mr. Griffin can very easily pick them out, and read them [1754] at the proper time.

Mr. Brody: If Mr. Moriarty wishes, I can ask Mr. Bell to collect them and return them to Mr. Gorans, and take the figures down and read them.

Mr. Moriarty: This is another way of putting evidence in that is already in before the Jury, and lengthening the case.

Mr. Griffin: The lengthening will be Mr. Moriarty's idea of how to do it.

Mr. Moriarty: We renew the objection.

(Testimony of Gerald E. Gorans.)

The Court: If the situation is confined to tax returns or exhibits, they may indicate tax years in evidence.

Mr. Brody: That is correct.

The Court: The witness may answer in that respect.

Q. (By Mr. Brody): Well, then, I will ask, Mr. Gorans, if you can state——

The Court: (Interposing) He is more or less stating what the exhibits showed for the purpose of saving time.

Q. (By Mr. Brody continuing): ——if you can state the total amount of Federal Income Taxes personally paid by Mr. [1755] Forster from the years 1945 through 1949?

A. The amount of taxes shown on the tax returns filed by Mr. Forster total \$129,472.00 in this five-year period.

Q. Now, can you state for the years 1945 thru 1949 the total amount of Federal Income Taxes paid by Issaquah Creamery Company?

A. \$67,523.00.

Q. And will you state for the years 1945 thru 1949, the total amount of Federal Income Taxes paid by Finstad and Utgard?

Mr. Moriarty: We make the same objection, if your Honor please.

The Court: This is limited, Mr. Gorans, to the books and records in evidence.

The Witness: I am not sure the tax returns for

(Testimony of Gerald E. Gorans.)

Finstad and Utgard are in evidence. The general ledgers are in evidence.

The Court: Does that have them in there?

The Court:. That has the payments in there.

Mr. Brody: The general ledger is in evidence as Defendants' Exhibit A-26, and which supplies the necessary information.

Mr. Moriarty: Did your Honor rule on our objection?

The Court: Yes; I feel it is in the interest [1756] of saving time to point out by one who is familiar with the figures what the exhibit shows.

Mr. Brody: I can also state that Plaintiff's Exhibits 17 thru 21 are the tax returns for Finstad and Utgard for the years 1945 through 1949.

A. Finstad and Utgard paid a total of \$23,319 in income taxes during this period.

Q. (By Mr. Brody): Will you state the amount of Federal Income Taxes paid by Simonson and Forster for the years 1945 thru 1949?

The Court: And show us, if you have that.

Mr. Brody: The Simonson and Forster ledger is in evidence, your Honor. I am looking——

Mr. Moriarty: Simonson and Forster returns for 1947, 1948 and 1949 are in evidence.

Mr. Brody: In evidence as Plaintiff's Exhibits 22, 23 and 24.

Mr. Moriarty: Then the testimony should be limited to these three years.

Mr. Brody: I will attempt to find the reference to the general ledger which may clarify this. The

(Testimony of Gerald E. Gorans.)

ledger of Simonson and Forster, 1945 through 1949, is Plaintiff's Exhibit 220.

A. Simonson and Forster paid \$1,701.00 in taxes [1757] during this period.

Q. (By Mr. Brody): Now, will you state the total amount of Federal Income Taxes paid by the Renton Ice and Ice Cream Company from 1945 through the fiscal year ending July 31, 1949, as shown by the tax returns which are in evidence as Plaintiff's Exhibit 25 thru 29, inclusive?

A. \$18,608.00.

Q. Now, can you state what Federal Income Taxes were paid by Apex Farms, Incorporated, in the years 1947 and 1949 as shown by the income tax returns, Plaintiff's Exhibits 30 and 31?

A. 1947 and 1949?

Q. 1947 and 1949.

A. In 1949, they had a loss; in 1947, they paid \$3,181.91.

Q. And will you state the full amount of Federal Income Tax paid by Alpine Ice Cream Company for the year 1949 as shown by its income tax return, Plaintiff's Exhibit 15? A. \$3,963.41.

Q. And now, will you total the figures which you have just given us?

A. The total amount is \$247,761.00.

Mr. Brody: No further questions, your Honor.

The Court: Would it be more orderly for the Government to cross-examine or for the other defendants to proceed?

Mr. Cox: We would prefer the first, your Honor.

(Testimony of Gerald E. Gorans.)

The Court: All right.

Mr. Patten: We would be ready.

The Court: The Government may cross-examine and the other defendants and the Government may have cross on that, and then redirect. Is that agreeable with all counsel? I believe that would be most orderly.

Cross Examination

Q. (By Mr. Patten): Mr. Gorans, in arranging your papers, we will just talk about Issaquah Creamery Corporation.

You have testified that the books and records of the Issaquah Creamery Company for the years 1945, 1946 and 1947 and 1948 and 1949 do not accurately reflect the income of that business, is that correct? A. That is correct.

Q. You base your conclusion, as I recall your testimony, upon three principal things:

Your observation of conditions during the summer of 1950; your examination of the summary books which are in evidence; your examination of certain subsidiary records, and your experience as an accountant. [1759]

Does that adequately summarize the basis of your conclusion, sir?

A. There are, in addition to that, there are some of the underlying invoices and so forth that were sent to the company.

Q. I said the subsidiary records.

A. Yes, including those.

Q. They could be called subsidiary records?

(Testimony of Gerald E. Gorans.)

A. Yes.

Q. The summary records in general are in evidence, are they not? A. Right.

Q. The host of subsidiary records in many instances are not in evidence, is that right?

A. Right.

Q. I believe it is clear that you were not actually physically present at the Issaquah Creamery Company at any time during these years?

A. No, I was not there.

Q. Now, Mr. Gorans, you further testified that the books and records of the Issaquah Creamery Company for the years 1945 to 1949, inclusive, were so inaccurate that in your opinion, a correct income tax return could not have been prepared from those books? A. Yes. [1760]

Q. You mentioned, as an example of these inadequacies—inaccuracies and inadequacies—I will mention what I recall—the fact that the actual cash on hand was out of balance with the cash shown in the books referring now to the general ledger?

A. Yes.

Q. And what was that amount, sir?

A. The amount that it was out of balance?

Q. Yes; that is cash on hand, out of balance with the general ledger?

A. According to the records, \$4,742.68.

Q. That is the—there was more cash on hand than was shown on the general ledger?

A. No, there was less cash on hand than shown on the general ledger.

(Testimony of Gerald E. Gorans.)

Q. You mentoined——

The Court: (Interposing) What date was this?

Mr. Patten: That is in 1950.

The Witness: Well, it was December 31, 1949.

Q. (By Mr. Patten): I believe you also mentioned that at the time of your investigation—that was about May, wasn't it?

A. It started on the first day of May.

Q. That the Company bank accounts were not reconciled with the bank balances shown in the general [1761] ledger, I believe?

A. It would not.

Q. And, to the best of your judgment, that lack of balance had existed for some time?

A. I was informed that it had not been balanced for a good many years.

Q. And what was the amount by which the figures did not reconcile?

A. I can give you the figure at April 30th.

Q. Yes. A. \$4,497.41.

Mr. Keesling: "These figures," are you referring to—what, by "these figures"?

Mr. Patten: We are referring to the difference between the bank account of Issaquah Creamery in the Washington State Bank as shown at the bank and the balance in that account as shown in the general ledger.

Mr. Keesling: All right.

Q. (By Mr. Patten): And was that over or under? Did the general ledger show more or the bank less?

(Testimony of Gerald E. Gorans.)

A. The bank showed the greater amount; the general ledger was understated.

Q. What is the net difference in those figures, sir, when you combine the cash in the underage or the cash in the banks with the—I mean the underage of the cash [1762] in the box, so to speak, and overage of cash at the bank? A. \$245.27.

Q. \$245.27; now, the date of your examination was in May, 1949. A. Right.

Q. Now——

Mr. Griffin: Wait a minute. 1950.

The Witness: 1950, excuse me.

Q. (By Mr. Patten): Now, if this difference, \$245.27 had been reconciled—offset—as of December 31, 1949, or taken back into balance as of December 31, 1950, it would not have affected income, would it?

The year-end income—the monthly charge at year-end?

A. It could have affected it to the extent of this difference.

Q. I say, if it had been in balance—if this \$247.27 difference had, by some means, been taken care of as of December 31, 1949, by an offsetting item, it wouldn't have affected income?

I am not trying—I am asking for information—I am not trying to confuse you, sir.

A. Well, the only way I can see—— [1763]

Q. (Interposing): Maybe I can make a hypothetical question—if the—if, on December 31, 1949, you had been over in your cash in the box \$1,000

(Testimony of Gerald E. Gorans.)

and under on your cash in bank of \$1,000, it wouldn't have affected income?

A. No.

Q. It would wash out?

A. It would wash out.

Q. And if, on December 1, 1950, you had been over cash in the box and under in the bank, it would have washed out and not affected income?

A. It would not have affected income.

Q. Thank you; now to return to our—that was digression—and now to return to your statement of defects and inadequacies in the books and records of the Issaquah Creamery Company, I believe you have stated there were no inventory records; is that correct?

A. None that we could locate.

Q. And you did make a—was there a physical inventory made in May, 1950? A. Yes.

Q. And what was the result of that inventory?

A. Do you want the amount of the inventory?

Q. The amount of the discrepancy in the inventory.

A. Well, there was no way of determining whether there was discrepancy or not. We took a physical [1764] inventory.

Q. Was there an inventory record in the general ledger?

A. There was a figure entered in the general ledger which supposedly representing the inventory as of December 31, 1950.

Yes, sir; but you had——

(Testimony of Gerald E. Gorans.)

Mr. Griffin (Interposing): 1949.

The Witness: Or, 1949.

Q. (By Mr. Patten continuing): So that you had no figure really to compare inventory with at the time you took it? A. No.

Q. What was your inventory at the time you took it? A. \$60,594.82.

Q. Now, what was the inventory, the next preceding book inventory, that you had? The book inventory for the next date?

A. January 1st of \$22,978.90.

Q. You were not able by reconstructing purchases in sales to build up a figure to make the comparison, were you?

A. It would be impossible to do in a manufacturing plant. [1765]

Q. I believe you also stated that accounts payable had not been reconciled nor overstated?

A. Right.

Q. I believe you stated that the milk purchase ledger overstated actual purchases, is that correct?

A. Right.

Q. Were these the principal defects which you observed, sir, and determined?

A. They were the major defects.

Q. I believe that you mentioned that there were certain minor deficiencies in the records which you also observed?

A. (Witness nodded in the affirmative.)

Q. Now, among the minor deficiencies of the

(Testimony of Gerald E. Gorans.)

records of Issaquah Creamery, did you find a failure to report receipts from sales?

A. Yes.

Q. You found that the corporation sold certain products and did not enter those sales in the books, did you not?

A. We didn't find any in the examination of the Issaquah records, but in other records that were examined, that was determined.

Q. Yes, sir; now, which were these other records which you examined by which you determined that all the [1766] receipts were not being entered in the books?

A. Account 198 in the Washington State Bank.

Q. That is Exhibit 55 here in evidence?

A. I don't know the number, but I know it is in evidence here.

Q. Did you compute the total amount of omitted receipts for the years 1945 and 1949?

A. I do not recall doing it, myself.

Q. Would it show in your reports, sir?

A. No.

Q. Would any of the people working under you do that?

A. You are talking about the total omitted receipts?

Q. Total omitted receipts.

A. Of Issaquah Creamery Company.

Q. Of Issaquah Creamery Company, for the year 1945 to 1949.

A. I don't recall anyone in our firm doing that.

(Testimony of Gerald E. Gorans.)

I think that Mr. Brody made some computation or examined the deposits in Account 198 to determine the amount that probably should have been income to Issaquah Creamery Company and I think that that is in evidence.

Q. That is in evidence; and you have no reason to doubt the correctness of those figures? [1767]

A. (Witness nodded in the negative.)

The Court: When you say "that", you are referring to?

Mr. Brody: I believe it refers to Exhibit 250; is that correct?

Mr. Patten: 250, is that correct? I was referring to our stipulation, and the analysis included both Alpine and Issaquah.

Mr. Cox: 238.

Mr. Griffin: The Brody analysis is 250.

Mr. Patten: 250; could I have Exhibit 238, please, sir?

(Whereupon, document was handed to Mr. Patten by the Clerk.)

Q. (By Mr. Patten): This is the — that has been stipulated to be the receipts which were omitted? A. Yes.

Q. You haven't totalled those, have you, sir?

A. No, I haven't totalled them.

Mr. Griffin: By "that", again, you are referring to?

Mr. Patten: 238.

The Witness: This is 238.

Mr. Griffin: May I have that question read

(Testimony of Gerald E. Gorans.)

[1768] that counsel just asked, if the Court please?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

Mr. Griffin: I thought it referred to checks and not receipts. There is a stipulation in regard to specific checks.

Q. (By Mr. Patten): Do you know——

Mr. Patten: “Specific checks made payable to Issaquah Creamery not recorded in corporate books and deposited to Hans Forster’s personal savings account”, to be exact.

Mr. Griffin: 198?

Mr. Patten: It doesn’t say.

Q. (By Mr. Patten continuing): You have stated that you were familiar with the handwriting of Mr. Hans Forster, I believe?

A. I am familiar with his signature to the documents. I am not—I don’t recall having seen very many of them.

Q. Have you examined the deposit slips by which—covering the deposit of these items to Account 198?

A. No, I have not examined those deposit slips.

Q. Now, when was the first time you went to Issaquah Creamery and met Mr. Forster?

A. It was on May 1, 1950.

Q. Now, when did you become acquainted with the existence of Account 198?

A. I think there was reference made to the fact that a savings account was maintained at the Wash-

(Testimony of Gerald E. Gorans.)

ington State Bank in this memorandum that Mr. Forster prepared which I referred to on——

Mr. Brody (Interposing): You mean Mr. Tremper.

A. (Continuing): ——a few days before going to Issaquah.

Q. (By Mr. Patten): Do you mean Mr. Tremper? A. Mr. Tremper.

Q. Is that the memorandum which was——

Mr. Patten: May I see Exhibit 33?

The Clerk: Plaintiff's or Defendants'?

Mr. Patten: Defendants'.

The Clerk: A-33; it wasn't offered.

The Court: It was just marked for identification.

Mr. Patten: Yes, sir. A-33.

Q. (By Mr. Patten): Do you have a copy of the memorandum? Did Mr. Tremper's memorandum mention that business receipts had been [1770] deposited in account 198?

A. No, all it stated, as I recall, was the fact that Mr. Forster had a savings account in the Washington State Bank. That is all it said.

Q. When did you find that receipts of Issaquah Creamery Company were being deposited in Account 198?

A. It couldn't have been until after a complete analysis of the deposit was made.

Q. And when was that?

A. That was done the latter part of August, 1950.

(Testimony of Gerald E. Gorans.)

Q. Can you tell the Court and Jury the means by which you have discovered that business receipts have been deposited in this account?

A. I didn't work on this myself. The other people in the firm worked on it, and the information that they developed was made available to me. They have explained to me how they obtained the information, and that was done by——

Mr. Keesling (Interposing): Objected to as hearsay.

The Court: I didn't hear you.

Mr. Keesling: Objected to as hearsay, as to what was told to him.

The Court: Has he stated anything that was done? He stated how he secured some information.

Mr. Patten: I frankly don't know what his answer will be.

Mr. Keesling: He said it was "explained to me".

Q. (By Mr. Patten): I gather you were referring——

The Court (Interposing): The question was how he found out about some business receipts being deposited to account 198; is that it?

Mr. Patten: Yes, sir.

The Witness: Correct.

The Court: Now, he is explaining how he found out. If there is any motion to be made following that, you may do so.

A. The explanation was made to me that there were two or three members of our firm went to the bank at Issaquah, and sorted through the deposit

(Testimony of Gerald E. Gorans.)

slips locating deposit slips to this account 198 after they had located deposit slips they started attempting to locate these deposit slips on micro-film, and along with that, the various checks deposited were also micro-filmed, and in reviewing these records, they obtained a fairly complete transcript of the various checks deposited in this account. It took them about two weeks to obtain that information.

The Court: This testimony, Ladies and Gentlemen of the Jury, Mr. Gorans is telling how he secured the information. That is offered not for the truth of what is stated, but merely to explain how he secured it. I think that covers your objection.

Q. (By Mr. Patten): Mr. Gorans, do you have just any approximate idea of the amount of business receipts deposited in account 198 during the period of time covered by the Indictment? I am not interested in an accurate figure.

A. I have never even attempted to get how much was in there.

Q. We can say it was a very large figure.

Mr. Brody: We will object to the question in view of the answer of the witness, your Honor.

Mr. Patten: I will withdraw it. We will not wait for you to add them up.

Q. (By Mr. Patten): Mr. Gorans, I would appreciate your telling the Court and Jury something about the accounting system in effect at Issaquah Creamery Company in the years 1945 to 1949. My question, of course, is limited to the basis of your knowledge. For this purpose, I would like to take

(Testimony of Gerald E. Gorans.)

a charge sale. Do you happen to know the unit by [1773] which butter is sold?

A. It is sold by the pound.

Q. The way you and I buy it; but, wholesale, how is it sold?

A. I still think it is by the pound, so far as I know.

Q. Well, all right; suppose a customer, during, we will say, the year 1946, ordered 100 pounds of butter. The butter is taken out of the warehouse at Issaquah and delivered to him. What record was made of that, at that point, if any?

A. Well, usually there would be a sales slip prepared.

Q. A sales slip; now, how many copies were made of that sales slip?

A. I am not sure; it was either two or three copies.

Q. The original of the copy was delivered to the customer, along with the butter; is that it?

A. I think so.

Q. And you don't know exactly what happened to the one or two others left?

A. Well, generally, they would be the basis for making the entry to record the sale and to record the account receivable. [1774]

Q. Would that be posted to the account receivable from the sales slip?

A. Well, it could have been. I don't know whether it was or not.

Q. Now, suppose a few days later, this same

(Testimony of Gerald E. Gorans.)

customer ordered 200 pounds of butter. Would the same record be made?

A. I think the same—the sales slips would be prepared.

Q. One or two copies made, and the copies kept at Issaquah; were the sales slips numbered numerically?

A. I don't know; I don't remember.

Q. Now, how were these records kept, so that at the end of the month, or whatever billing period they used, Issaquah Creamery would know to bill this particular customer for 300 pounds of butter; do you know?

A. They had the accounts receivable record.

Q. I am not clear myself. Was the accounts receivable record posted from sales slips or invoices?

A. Well, your sales slip and invoice is the same thing; what you refer to as a sales slip is also an invoice.

Q. That is correct; but many firms, and did Issaquah Creamery, bill monthly for certain customers instead of billing for each delivery? [1775]

A. So far as I know, there was practically no billing with delivery unless it was someone that did not have a credit standing.

Q. So that, at the end of the month, they would send him an invoice or billing; what is the next step in the billing period?

A. It is purely to make a transcript of the information contained on the accounts receivable side and send it to the customer.

(Testimony of Gerald E. Gorans.)

Q. And that would be an invoice of the billing?

A. No, that would be a statement.

Q. That would be a statement; and would be compiled from the sales slip which had been posted to the accounts receivable? A. Right.

Q. And what other entries would be made at the time the statement is sent to the customer?

A. None; there would be no other record made.

Mr. Le Sourd: I didn't get that last answer.

Q. (By Mr. Patten): No other posting?

A. No.

Q. Now, were these invoices, or billings, or statements, or whatever we might choose to call them—I believe you say statements—is that the correct term [1776] for them. A. A statement.

Q. A monthly statement?

A. A statement of account.

Q. Were they numbered serially, or was there any control over them? A. No, none.

Q. Now, you have mentioned that the sales slips were posted to an accounts receivable ledger. Would you tell us the purpose of an accounts receivable ledger?

A. It is purely to keep a record of the amount that your customers owe you.

Q. Of what you sold them?

A. What you sold them, and what they haven't paid.

Q. What they have paid, and what they haven't paid; is that the purpose?

A. That is correct.

(Testimony of Gerald E. Gorans.)

Q. Now, we will assume on the 20th of the following month, a check is received from this customer in payment of the 300 pounds of butter. Could you tell the Jury and the Court what happens then; what entries are made in the record, and what records are made or were made during the years 1945 to 1949?

Mr. Keesling: I object to the form of the question. He asks what records were made in these records. [1777] It is part hypothetical and part not.

Mr. Patten: I will rephrase it.

Q. (By Mr. Patten): Assuming, in a hypothetical situation, that a hypothetical company with books exactly as those existing at Issaquah Creamery during the years 1945 to 1949, and assuming that the 20th of the month, an item in payment of 300 pounds of butter was received, how would that be entered in these books?

The Court: This is purely hypothetical?

Mr. Patten: Yes, sir; I go all the way.

Mr. Griffin: Even the payment.

Q. (By Mr. Patten continuing): The check arrives in the mail; what would be entered?

A. Well, there would be the check received, it would be entered in cash receipts.

Q. In a cash receipts journal?

A. Well, first of all, I think that they made up a slip of paper indicating that so many dollars was received, and who it was received from.

Q. That would be called a credit slip?

A. That would be called a credit slip.

(Testimony of Gerald E. Gorans.)

Q. Let's stop right there, now. What was done with this credit slip? [1778]

A. The credit slip was given to the person who posted Accounts Receivable to make an entry in the accounts receivable card.

Q. To show that the customer paid that?

A. To show that it was received.

Q. Now, what was the next place the check was entered?

A. The check was turned over to the cashier, and recorded on the deposit slip, and included in the total receipts of money.

Q. Was there a receipts journal?

A. Not by individual items, no.

Mr. Griffin: I didn't get the last answer.

The Witness: There was not a journal to record receipts by individual item.

Q. (By Mr. Patten): Well, what happened to the check? A. Deposited in the bank.

Q. Which bank? The company bank account?

A. Washington State Bank.

Q. The company's account?

A. The company's account.

Q. And what is the purpose of the company's bank account?

A. To record receipts of the company and also to [1779] make disbursements for the company.

Q. Now, with reference to the checks which are shown on Exhibit 238 here, will you explain to the Jury which, if any, of the steps which you have

(Testimony of Gerald E. Gorans.)

described, were omitted with reference to those receipts?

Mr. Griffin: If he knows.

Q. (By Mr. Patten continuing): If you know.

A. I don't know which ones were omitted.

Q. Did you find, in the course of your examination of the subsidiary records, any sales slips relating to any of the sales on Exhibit 238?

A. I never looked for any.

Q. Did you find any invoices relating to any of the transactions on this—or any of the sales shown on this piece of paper, Exhibit 238?

A. Well, again, I didn't look for any of them.

Q. Did you find any posted to the accounts receivable, relating to any of these transactions?

A. Again, I didn't look for any of these.

The Court: What was the last item?

Mr. Patten: He didn't look for any.

The Court: "Any"—what was it?

Mr. Patten: Postings to the accounts receivable.

Q. (By Mr. Patten): Did you find any of these payments credited to accounts receivable?

Mr. Griffin: If the Court please, I thought that exhibit was a stipulation and it was stipulated they were not entered on the books.

Mr. Patten: That is correct. I was thinking with such a host of exhibits here if the controls were so inadequate, maybe mistakenly some of these items might have gotten in some of these records.

Q. (By Mr. Patten): Did you find any of those posted to the journals?

(Testimony of Gerald E. Gorans.)

A. Again, I didn't look for any of them.

Q. In your opinion as an expert accountant, if you had looked for them, would you have found them?

Mr. Brody: We will object to that, your Honor.

Mr. Patten: I think it is a typically fair question.

The Court: When the witness speaks of these figures, is he regarding them as stipulated figures, or what?

Mr. Patten: Exhibit 238; the receipts of certain sales listed in Exhibit 238.

Mr. Brody: If he accepted the stipulation, there [1781] is no question.

Mr. Patten: No question they were not reported, but is there error?

Mr. Keesling: I object because he said he didn't look.

The Court: He is being asked as an expert. The thing that is vague to me is whether he regards them as unposted items, and accepts them as that. Is that what the question is?

Mr. Patten: Yes, sir; unreported items which were not recorded in the books of Issaquah Creamery Company and were deposited, as Mr. Griffin said, in account 198.

The Court: Well, if they are accepted as unrecorded, why, obviously, he wouldn't find them.

Mr. Patten: I think I have a point, your Honor, that if this is the result of carelessness or inadvert-

(Testimony of Gerald E. Gorans.)

tent handling that many items—some of them—would have gotten in the wrong place.

Mr. Griffin: We concede they all got in the wrong place, and have so conceded from the start.

Q. (By Mr. Patten): Mr. Gorans, there are numerous checks on Exhibit 238 here, sir. Did you find any of those checks listed on the deposit slips of the Issaquah Creamery Company? [1782]

Mr. Brody: The witness said he did not examine the deposit slips, your Honor.

Q. (By Mr. Patten continuing): Mr. Forster's deposit slips, you did not?

A. I did not examine the deposit slips of Issaquah Creamery Company, either.

Q. Did you find any instances where a customer had been billed the second time for an item which appeared on account 238, on Exhibit 238?

A. I don't recall any instances.

Q. Now, among the minor discrepancies which you discovered at Issaquah Creamery Company, did you perhaps discover that certain personal expenditures of Mr. Hans Forster had been charged to expense items on the books?

A. They were shown as Expense items in the cash disbursement books, and carried as such into the general ledger.

Q. Did you make any independent determination of the—as to the amount of these expenditures which were posted?

A. I have got about six figures here, if I can total them up.

(Testimony of Gerald E. Gorans.)

Q. Fine.

(Whereupon, there was a brief pause.)

Mr. Patten: May I have Exhibit 258?

A. The figure I have covers a period of ten years, going clear back to 1940 and 1941.

Mr. Keesling: I object to anything outside of the record.

Mr. Patten: All right, I will withdraw the question, then.

Q. (By Mr. Patten): There were a substantial amount of personal expenditures charged on the books of various items as business expense?

A. There was quite a few.

Q. All right; handing you Exhibit 258, which has been identified as a schedule of accounts for Issaquah Creamery Company, Incorporated, and I am calling your attention to Account 107——

Mr. Keesling: Object, as beyond the scope of the direct.

The Court: Well, I think this examination here—direct, covers most of the records in evidence, so I assume that practically all records may be subject to examination by this witness.

The Witness: What was the question?

Mr. Patten: The question is: [1784]

Q. (By Mr. Patten continuing): Does Account 107 apply to the books of Alpine Dairy?

A. No.

Mr. Keesling: Would you refer to the exhibit number, please.

Mr. Patten: Exhibit 258.

(Testimony of Gerald E. Gorans.)

Q. (By Mr. Patten): On the left, is certain accounts, Issaquah Creamery, and on the right, certain accounts, Alpine Dairy.

A. It just says "Alpine", but at the top it says, "Issaquah Creamery Company, Incorporated," and prior to 1940, there were two operations for Issaquah Creamery Company, one at Issaquah and one downtown, one known as Alpine, and one known as Issaquah. I do not think this applies to Alpine Dairy at all.

Q. That does not apply to Alpine Dairy?

A. I wouldn't think it would on the information on here.

Q. At Issaquah, was there an account 107?

A. I am not sure.

Mr. Le Sourd: What was that?

The Witness: I am not sure. If I could see the general ledger, I might be able to tell you.

The Court: We might take a recess, and at the [1785] time of recess, you can check the books, Mr. Gorans.

Ladies and Gentlemen of the Jury: We will now take the mid-afternoon recess. The Court calls **your** attention to the admonition given on similar occasions, and asks that you heed it on this occasion.

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, at 2:45 o'clock p.m., a recess was had in the within-entitled and numbered cause, until 3:02 o'clock p.m., March 19, 1954, at which time, Counsel and Defendants, here-

(Testimony of Gerald E. Gorans.)

tofore noted, being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Patten.

Q. (By Mr. Patten): Mr. Gorans, I am handing you Plaintiff's Exhibit 200 and calling your attention to the short pieces [1786] of paper under there. Are those the sales slips of the type we were discussing before recess, sales slips of Issaquah Creamery Company?

A. Well, it would be similar to this. I am not sure this is the exact type, because this goes back to 1943.

Q. Push ahead. There are some. There is one.

A. Yes, the same thing used in 1945 here.

Q. And they do bear a number, is that correct, sir?

A. Yes.

Q. They are numbered serially through the book?

A. Yes.

Q. And what would be the purpose of that, sir?

A. It is hard to say what the purpose would be.

Q. To locate if any were missing; wouldn't that be the principal purpose?

A. If it was used for that purpose; there could

(Testimony of Gerald E. Gorans.)

be other purposes, supposedly as means of identification of sales slip, so far as a customer is concerned, because in sending them a statement, you put the date and the invoice number, and the number appearing here would be the number on their statement, so that they could tie in the figures.

Q. Yes, sir; now, referring to Alpine Dairy for a [1787] moment, in your examination of Alpine Dairy, did you find that certain personal expenditures of Mr. Forster had been charged to business expenses? A. Yes.

Q. Did you find on the—on the books and records of Alpine Dairy, any account to which those expenses could have been properly charged—those expenditures?

A. Well, there was an account in the general ledger. They could have been charged to Mr. Forster's capital account.

Q. He did have what was called a capital or drawing account?

A. I think in some instances, there was actually a heading that says, "Drawing Account" in the ledger for Alpine Dairy.

Q. Handing you Exhibit 262, marked with some large sheets of paper, is that what you would call a drawing account?

Mr. Keesling: 262, what is it?

Mr. Patten: General ledger.

A. The account says, Hans Forster withdrawals. I would assume that that is what it would be used for.

(Testimony of Gerald E. Gorans.)

Q. (By Mr. Patten): And these withdrawals, what are the nature of the withdrawals here?

The Court: Does that page have a number?

The Witness: No, it doesn't.

Mr. Patten: I have it marked with a large piece of paper.

The Court: Perhaps you had better put your name or initials down so that the page can be identified.

(Whereupon, the witness wrote on the page.)

Q. (By Mr. Patten): And that is a drawing account of the Alpine Dairy, or used as such?

A. I would assume that that is what it was used for.

Q. We will turn over a few more pages.

Mr. Griffin: Counsel asked the nature of those withdrawals, and there was no answer. I don't know whether the witness can answer or not.

Q. (By Mr. Patten continuing): Five in number, I believe.

A. There are five numbers, and four of them for income or one has income tax, and there is quotation marks under and one item I think says "Bank."

Q. Stock?

A. It could be stock. It is not too clear.

Q. And the date on that? A. 1946. [1789]

Q. Now, the last page, would you write your name there, Mr. Gorans?

(Whereupon, witness wrote on the exhibit.)

(Testimony of Gerald E. Gorans.)

Mr. Griffin: That is the next page you were referring to?

Mr. Patten: Yes.

Q. (By Mr. Patten): What is that account, sir?

A. It says Alpine Dairy Hans Forster withdrawals.

Q. And there are two items, and what is the date and the year? A. 1945.

Q. And the withdrawals?

A. There are two items here that are recorded as debits, which would indicate that they are withdrawals.

Q. Would you identify those withdrawals?

A. Well, the first one has F.U. written by it in the amount of \$2,000 and the second one Arctic Gardens, \$2400.

Q. Now, we turn to a page in Exhibit 262, with the name Mr. Tremper written on it. Could you tell us what that account is, sir?

A. All I can say is it says Hans Forster on it. It has got some figures on it, and dates, but there is no identification as to what they are. [1790]

Q. Can you tell whether that is an account of Issaquah Creamery, or an account of Alpine Dairy, sir? A. Not from the ledger page itself.

Q. Do you know from your examination, and the examination of your firm, what that account is?

A. About all you can say is that it is fairly close to some pages marked "Issaquah Creamery Company".

(Testimony of Gerald E. Gorans.)

Q. And you have no idea what that account is?

A. You can't tell from that.

Q. Did you make any investigation to determine what that account might be?

A. I don't recall ever making any examination. That goes back to the year 1943, and there are very few records available that you could compare anything in that general ledger with.

Q. You stated that your investigation went back several years, I believe? A. Yes.

Q. Did you ever find an account at Issaquah Creamery which served as a drawing account?

Mr. Keesling: We object to anything outside of the Indictment.

The Court: What time are you referring to? Or, are you referring generally?

Mr. Patten: Yes, sir. [1791]

A. I am not sure whether we did or not. I don't believe we found anything that would indicate there was definitely a drawing account.

I think on the basis of information we found that at one time, Mr. Forster wasn't being paid his salary and it was being credited to an account, but that is all that I recall.

Q. (By Mr. Patten): An account to which personal expenditures might properly be charged?

A. They could have been.

Q. Now, sir, you were testifying this morning concerning the books and records of Alpine Ice Cream Company, I believe sir? A. Yes.

Q. Am I correct that the Alpine Ice Cream

(Testimony of Gerald E. Gorans.)

Company is the successor in name to the Arctic Gardens? A. That is what the——

Q. There was a—let me state what I understand to be the fact, and you tell me if I am true—if I be correct.

The Arctic Gardens was a corporation. It changed its name to Alpine Ice Cream Company, discontinued its original frozen food business and engaged in the business of selling ice cream? [1792]

A. Yes.

Q. Is that substantially correct?

A. Yes.

Q. You testified that \$25,000 in sales was taken up in the books of Arctic Gardens during the year 1949 for which you had no clear explanation, is that right? A. Yes.

Q. By the way, what was the net income of Arctic Gardens for the year 1949?

Did you compute that, sir? I don't mean Arctic Gardens now; I mean Alpine Ice Cream.

Mr. Cox: Does that amendment apply to the preceding question, too?

Mr. Patten: Arctic Gardens did not file a return in the year 1949.

Mr. Keesling: The preceding question applies to Alpine Ice Cream.

A. You are speaking of Alpine Ice Cream alone?

Q. (By Mr. Patten): For the year 1949.

A. For the year 1949?

Q. Yes.

(Testimony of Gerald E. Gorans.)

Mr. Le Sourd: Let me get this clarified in my own mind, if your Honor please. Does the question relate [1793] to the income for the whole year for the corporation, the first part Arctic Gardens, and the last part Alpine Ice Cream, or only that portion of the year in which the Company was called Alpine Ice Cream?

Mr. Patten: Could I see Exhibit 15? It is for the period covered by Exhibit 15.

Q. (By Mr. Patten): When was Alpine Ice Cream Company incorporated, sir, or the name changed?

A. It was sometime either the latter part of April or May or June of 1950; sometime in there.

Mr. Le Sourd: 1949.

Mr. Patten: 1949, I believe.

The Witness: 1949, excuse me.

Q. (By Mr. Patten): And what amount of income for the remainder portion of the year is reported on Exhibit 15?

A. Before an operating loss carry-over into this, is that the figure you want?

Q. No, the ordinary income.

A. \$71,136.53.

Q. Against which there was applied an operating loss carryover? A. Right.

Q. Which previously belonged to Arctic Gardens? [1794] A. Yes.

Q. Did you determine the source of the extra \$25,000 which you mentioned this morning?

A. Yes.

(Testimony of Gerald E. Gorans.)

Q. What was that source, sir?

A. There was a transfer of \$25,000 from the bank account, maintained for Alpine Ice Cream Company prior to the date that Alpine Ice Cream operation was taken over by the former Arctic Gardens Company.

Q. The Alpine Ice Cream Company was formerly known as the Daisy Ice Cream Company; is that correct?

A. In 1944 and part of 1945, it was.

Q. Except for this \$25,000 which you mentioned had any of the cash sales of Daisy Ice Cream Company or the Alpine Ice Cream Company been reported in any income tax returns during the years 1945 to 1948?

Mr. Griffin: I didn't get about the middle of that question.

The Court: Mr. Reporter, would you read the question?

(Whereupon, preceding question was read by the reporter.)

A. Some of the income of this corporation was actually picked up by either Issaquah Creamery Company or Alpine Dairy. [1795]

Q. (By Mr. Patten): The funds from the account from which this \$25,000 was transferred, had the—had the deposits to that account been previously reported in income—as income?

A. I would say that part of it had. I am not sure that all of it did, but I think in taking this

(Testimony of Gerald E. Gorans.)

\$25,000 into consideration, most of it was reported.

Q. The \$25,000 was reported?

A. Reported on Alpine Ice Cream Company by Alpine Dairy Company and Issaquah Creamery Company also through disbursements out of this bank account, ended up reporting part of the profits from the Alpine Ice Cream operation in their tax returns.

Q. This \$25,000 hadn't previously been reported any place, had it? A. No.

Q. And against that, there was applied an operation loss carried back? A. Right.

Q. Now, I believe you stated that you started your investigation in May, 1950, is that correct, sir? A. Yes.

Q. When as it, sir, that you found out about the existence of the Daisy Ice Cream Company, or the Alpine [1796] Ice Cream Company, and their bank accounts?

A. We didn't find out about the bank account until approximately the first of November, 1950.

Q. And what bank accounts did you find out about at that time?

A. We found out about an account that was maintained at Peoples National Bank.

Q. In the name of Alpine Ice Cream?

A. Yes.

Q. Would you tell the Court and Jury how you found out about these bank accounts, that bank account, rather?

A. Well, in gathering the records that were out

(Testimony of Gerald E. Gorans.)

at Issaquah together to bring them in to the office that we had rented to work on, we found some bank statements and cancelled checks that bore the name Alpine Ice Cream Company, and seeing these, we started asking questions about them, and that is when we found out about the existence of this account.

Q. Had you previously seen any records of the Alpine Ice Cream Company or the Daisy Ice Cream Company during the period prior to November, 1950?

A. I don't recall of ever having seen them. We may have run into something but it wasn't significant enough to cause us to go into it further at that time. [1797]

Q. Prior to November, 1950, you had had numerous conferences, I believe, with Mr. Hans Forster, had you not?

A. Yes, about specific things.

Q. You had had numerous conferences with Mr. Erickson, had you not? A. Yes.

Q. The existence of these companies was not mentioned at any of these conferences, was it?

A. No. I might clarify that to the extent that at that time there was an Alpine Ice Cream Company, and if they had talked about it, I would have probably assumed they were talking about the company then in existence.

Q. You had examined numerous monthly—
Mr. Patten: May I rephrase the question?

Q. (By Mr. Patten continuing): Monthly earn-

(Testimony of Gerald E. Gorans.)

ing statements were prepared for Issaquah Creamery Company, were they not? A. Yes.

Q. You have examined all of the available earning statements for the years 1945 to 1949, have you, sir?

A. I don't believe we have examined them all.

Q. A considerable number of them? [1798]

A. In fact, we didn't examine too many of them.

Q. Have you made any analysis of monthly earning statements? A. No.

Mr. Brody: Are you speaking of Issaquah Creamery Company?

Mr. Patten: Issaquah Creamery Company.

Q. No?

A. No, we did not make any monthly analysis in going back before the period of the Indictment, no.

Q. Now, you testified this morning at considerable length regarding differences between various records, I believe. There were certain differences you testified which existed between the income tax returns of certain of these businesses, particularly at Issaquah Creamery Company, and the general ledger, did you not?

A. In fact, I think only——

Q. (Interposing) A few of them?

A. A few of Issaquah Creamery Company.

Q. And you testified as to certain differences between the general ledger and the journals which were the records kept by Mr. Erickson out there, did you not?

(Testimony of Gerald E. Gorans.)

A. I don't recall testifying to any differences between the journals of the Issaquah Creamery.

Q. And the general ledger?

A. And the general ledger.

Q. Well, let's start back. I believe, in the case of Finstad and Utgard, you testified concerning certain differences between a monthly summary prepared by Mrs. Simonson and the general ledger, didn't you?

A. All I testified was to the figure put in the general ledger.

Q. Yes, and then as I remember there was some testimony regarding Issaquah Creamery, or one of the corporations, between the journals, which are still a summary record, and the tax returns and the general ledger?

A. In Issaquah Creamery Company, there was some differences, in Alpine Dairy; between them.

Q. And you testified concerning differences which existed between subsidiary records and the general ledger and the tax returns?

A. On Alpine Dairy, yes.

Q. On Alpine Dairy; now, isn't it a fact that if there is a difference between a subsidiary record, such as invoices and sales slips, and general ledger, and the tax returns, that difference might occur at any place along the steps?

A. That is right. [1800]

Q. Now, in connection with your examination——

Mr. Patten: A-15, please?

(Testimony of Gerald E. Gorans.)

The Clerk: A-15.

Mr. Patten: A-15 and A-16.

The Clerk: A-15 was withdrawn.

Mr. Patten: A-16 was substituted.

(Whereupon, there was a brief pause.)

Mr. Patten: Perhaps I can proceed without it.

Q. (By Mr. Patten continuing): A-16, you are familiar with Exhibit A-16, not specifically that exhibit but the—but what it purports to be?

A. I was here when there was some testimony about it.

Q. That has been identified as what, sir?

Would you tell us what that is? Not that specific one, just for purposes of illustration.

A. It is a summary tape of the miscellaneous columns, as I recall, and some other columns appearing in the cash disbursement book for Issaquah Creamery and Alpine Dairy for, I believe, August, 1948.

Q. Yes, sir; now, during the course of your examination, did you find any tapes similar to Exhibit A-16 which were at variance with the general ledger?

A. I don't recall ever using any of these tapes to [1801] check any of the figures entered in the general ledger.

Q. Now, you have testified that the books and records of Issaquah Creamery were so inadequate that a correct income tax return could not be prepared from those books and records for the years 1945 to 1949; is that correct, sir?

(Testimony of Gerald E. Gorans.)

A. That is correct.

Q. Did you make the same observation with regard to the books of Alpine Dairy?

A. Yes.

Q. Now, in your experience as an accountant, sir, haven't you seen plenty of large firms with books no more elaborate than these?

A. No, I have never seen any large firm with such a minor number of books as what had been kept here.

Q. Now, isn't it true, sir, that if all the information and all the sales had been entered in these books, that they would have substantially reflected the income of the business?

A. It would depend on how they were recorded in the books.

Q. So the basic difference is not the books themselves, but how items were entered in the books and what did not enter into the books?

A. You get into what was entered in the books, and [1802] how they were entered in the books themselves. There are several areas in which they could get out of——

Q. (Interposing) If——

The Court: (Interposing) Did you finish?

The Witness: Well, where errors will develop.

Q. (By Mr. Patten continuing): If all the information had been entered in these books in the proper places, would they have correctly reflected the incomes of the business which they sought to cover?

(Testimony of Gerald E. Gorans.)

A. Well, if everything was entered, and everything was entered properly, they would have reflected the income.

Q. Leaving aside the question of depreciation, isn't it in fact true that you can keep a correct account of income from a very simple set of books?

A. A simple operation, yes. A complex operation, no. There is too many areas outside of depreciation that you get into factors that affect income that have been fairly well neglected in these books.

Q. If a business, regardless of its size, had a bank account, and deposited all of its receipts in that bank account, and had a checkbook and paid all of its expenses by means of checks drawn on that account, couldn't you, with a few technical adjustments, compute [1803] the income of that business?

A. If all it amounted to was selling things and buying them, yes.

Mr. Brody: I wonder if you could please raise your voice, Mr. Gorans.

Mr. Patten: Exhibit A-51, please?

The Clerk: There is no A-51.

Mr. Patten: Mr. Brody introduced it. It is a large folder.

The Court: A-48.

Mr. Cox: A-48, here it is.

Mr. Patten: I am in error; it is A-48.

Q. (By Mr. Patten): You have testified have

(Testimony of Gerald E. Gorans.)

you not, that you have had numerous conferences with Mr. Hans Forster? A. Yes.

Q. How is Mr. Forster generally known to his associates?

A. Who do you mean by his "associates"?

Q. His close associates and friends?

Mr. Griffin: May I inquire what you mean by the question?

How is he generally known?

The Court: Are you talking about his name?

Q. (By Mr. Patten continuing): Is he called Mr. Forster, or does he have a nickname?

A. He is referred to as Hans, I think.

Q. And you have testified that you are familiar with the handwriting of Mr. L. Hicks Taylor?

A. Yes.

Q. I would like to read a portion of Defendants' Exhibit A-48 to you, and ask if it is the handwriting of Mr. Taylor.

The Court: First, do you want to show it to him?

Mr. Patten: Yes, sir.

(Whereupon, document was shown to the witness by Mr. Patten.)

Q. (By Mr. Patten continuing): Is that note in the handwriting of Mr. Taylor?

A. It appears to be.

Q. Would you read it to the Jury, please, sir?

Mr. Keesling: What page is that?

The Witness: The seventh page from the bottom.

(Testimony of Gerald E. Gorans.)

The Court: You may read it, if you wish, Mr. Patten.

Mr. Patten: Yes.

The Court: All you wanted was the handwriting, [1805] as such?

Q. (By Mr. Patten): That appears to be the handwriting of Mr. Taylor? A. Yes.

Mr. Patten: "Hans, this is dropping the profit to April 30, 1949, which displaced to Alpine Dairy."

May I have Exhibits A-49, 16, and 20? It is a small book.

The Clerk: You mean 120?

Mr. Patten: Yes, 120.

(Whereupon, there was a brief pause.)

Mr. Patten: And 167.

Q. (By Mr. Patten): Handing you also Plaintiff's Exhibit 167,— A. Yes?

Q. —have you analyzed those checks and transactions, sir? A. Yes, I have.

Q. Referring to the year 1946—

Mr. Keesling: (Interposing) Is this Exhibit 167?

Mr. Patten: 167.

Q. (By Mr. Patten continuing): —do you know the purpose of [1806] that check, sir?

A. It was for a life insurance premium.

Q. On whose life? A. Mr. Forster.

Q. And what is the amount, sir?

A. \$3,424.34.

Q. Do you know to what account that check was charged, sir? A. I don't recall.

(Testimony of Gerald E. Gorans.)

Q. Do you recall that it was charged to an expense account?

A. Yes, it was charged to an expense account.

Q. And claimed as business expense by the Alpine Dairy? A. Yes.

Q. Calling your attention to Exhibit 16, is that same payment claimed as an expense of the Hans Forster trust?

Mr. Cox: Objected to as immaterial and irrelevant.

Mr. Patten: Payment in the same amount?

The Court: Is that the——

Mr. Patten: Hans Forster trust.

The Court: Exhibit 16, is that a tax return?

The Witness: Yes, tax return of the trust.

The Court: It is in evidence, is it not? [1807]

Mr. Patten: Yes.

Mr. Cox: Is it?

Mr. Patten: Yes.

Q. (By Mr. Patten continuing): Is that same amount claimed as an expense to the trust?

The Court: Objection overruled, Mr. Cox.

A. There is a figure on here for insurance of the same amount.

Mr. Patten: May I see Exhibit 71?

Q. (By Mr. Patten): It was claimed as an expense of the trust?

A. There was a payment during the year 1946 by the trust that was claimed as a deduction by the tax return.

Q. And handing you Exhibit 71, I would ask

(Testimony of Gerald E. Gorans.)

you if during the year 1946 a similar amount was deposited in account 198?

Calling your attention to page 3 of that, I will ask you if you can find a check in the same amount?

A. Well, there is a check from the trust, or from the trustee, in this amount, payable to Hans Forster, shown on here.

Q. Would you explain that transaction to the Court and Jury, sir? [1808]

A. In 1945, this life insurance policy in which the trust was named the beneficiary was taken out by Mr. Forster. A personal check was issued to the insurance company which was drawn on the personal checking account. I think there is an exhibit here in evidence which shows this disbursement, and apparently the trustees decided that they would stand the expense of that insurance policy and refunded to Mr. Forster the amount of the premium that he had paid.

Now, the premium falls due, either in the latter part of September or October, of each year, and this check was deposited, from the trust was deposited, on March 30, 1950, and there was a check drawn on the trust bank account on April 1, 1946, in the amount of \$3,424.34, and it is very apparent that it is the check from the trust that was deposited in Account 198.

Q. Is an insurance payment of this type a deductible expense to a trust such as this?

A. No; as I understand the Internal Revenue Code, it is not deductible.

(Testimony of Gerald E. Gorans.)

Q. So that it was claimed as an expense, both by the corporation and the trust?

Mr. Cox: Corporation?

Q. (By Mr. Patten continuing): By the business, claimed as [1809] business expense of Alpine Dairy and an expense of the trust?

A. Each one claimed a deduction. One covered the 1945 payment, and the other the 1946 payment.

Q. And the check was deposited and Mr. Forster received the money back, besides?

A. And he received a refund of the first payment from the trust.

Mr. Patten: May I have 278?

Q. (By Mr. Patten): I believe you testified as to one year in which a capital gain of Mr. Forster was entitled to a capital gain carryover?

Mr. Cox: Loss.

Q. (By Mr. Patten continuing): Capital loss carryover. What year was that, please?

A. 1949.

Q. And what was the amount of that capital loss carryover? A. The amount shown——

Q. That was a carryover from 1947, was it?

A. 1948.

Q. Eight; what was the loss in 1948?

A. The total loss in the year 1948 was \$6,127.88.

Of that amount, \$2,000 was deducted on the return for 1948 and the difference, \$4,127.88, is shown on the return as Capital Loss Carryover to 1949.

Q. Now, 1949 is a joint return?

A. Yes.

(Testimony of Gerald E. Gorans.)

Q. And \$2,000 was available?

A. There was \$2,000 deduction available, but not on a joint return.

There is \$2,000 if you file separate returns in 1949 as had been done in prior years.

Q. So that, really on a joint return, there was only \$1,000 to carry over?

A. That is right; plus the amount of the capital gain in the year 1949. But, there should have been separate returns filed for the year 1949.

Q. It isn't your testimony that Mr. Forster overpaid his income tax in 1949?

A. Only on the basis of the way this was handled.

Q. Only on that \$1,000 adjustment; I believe you started work in May of 1950; now, how many people from your firm were assigned to this job?

A. I think I said the other day there were 19 different people that had worked on some phase of Mr. Forster's—on some of the accounting records of Mr. Forster's companies during the year 1950. Now, I did not [1811] try to keep any record, nor did I try to attempt to determine the exact number of people that might have been working on it in any particular day, or for any particular period of time.

Q. And I believe the charge by your firm for these services was \$70,000?

A. Covering almost a four-year period, it was.

Q. Do you have any idea of how that amount should be broken down between services in connec-

(Testimony of Gerald E. Gorans.)

tion with setting up improvements in the accounting system there and what portion of it is allocable to the investigation and determination of liability for prior years? A. No, I don't.

Q. Could you make any rough——

A. (Interposing) I don't think I could even make an educated guess on it.

Q. Now, you have computed the amount of tax that Mr. Forster and corporations owned or controlled by him have paid during the years covered by the years in the Indictment, have you not?

A. The amount shown on the tax returns. If there is any question as to whether they were actually paid or not, that I am actually not sure of.

Q. Now, did you include in that the amounts for Mrs.—which were paid on the tax returns of Mrs. [1812] Forster? A. Yes.

Q. Now, did you include in that the amount which Mr. Egeness paid? A. No.

Q. Did you include in that the amount which Mrs. Baskett paid? A. No.

Q. Did you include in that the amount which Mr. Schneider paid? A. No.

Q. You properly should have, shouldn't you?

A. I don't believe so.

Q. Now, you testified concerning numerous adjustments to the books of—necessary to the books of the Issaquah—I mean the Alpine Dairy, did you not, sir? A. Yes.

Q. Numerous adjustments which you considered necessary to the books of Alpine Dairy?

(Testimony of Gerald E. Gorans.)

A. Yes.

Q. Now, the net effect of these adjustments which you discussed, would it be to lower or raise the capital account as reflected on the books?

A. I believe it would raise it. [1813]

Q. Do you have any idea how much it would raise it, sir?

A. Well, based on the information that was available to us, it would be in the neighborhood of \$140,000 at December 31, 1949.

Q. Would raise it that much? A. Yes.

Q. So the figure which appears on Plaintiff's Exhibit 278 would in your opinion be—\$161,438.68 would be—in error that amount?

A. The figure probably should be increased by the amount I gave.

Q. And which would have the result——

The Court: (Interposing) Should be increased by what amount?

The Witness: By the amount of approximately \$140,000.

Q. (By Mr. Patten continuing): So, using the figure you have given me, the net worth statement—the net worth statement as you prepared it, using the same figures would show \$148,000 more income than this one shows, wouldn't it?

Mr. Griffin: Are you talking about income or net worth, now?

Mr. Patten: Income computed by net worth income. [1814]

A. It would show that much more net worth.

(Testimony of Gerald E. Gorans.)

Q. I am talking of the effect of changing this capital account.

The Court: You might identify that figure for the record.

Mr. Patten: It is Exhibit 278, and it is item 87.

Mr. Griffin: May I have the question, if the Court please, whether he is dealing with net worth or with actual income?

Mr. Patten: I am dealing with income computed by the net worth method.

The Court: Do you wish a question read, Mr. Griffin?

Mr. Griffin: If the witness can answer the question, I would like the question read.

The Court: Do you want the question read, or will Mr. Patten re-state it?

(Whereupon, second preceding question was read by the reporter.)

Mr. Patten: I don't understand that one, myself, now.

Mr. Griffin: That is why I interrupted.

The Court: You will withdraw that?

Mr. Patten: Yes, I would like to. [1815]

Mr. Griffin: It is four o'clock, if the Court please.

The Court: You can state the question so we can recess.

Q. (By Mr. Patten): If, in this computation, instead of using this figure for item 87, we used the figure which you had given me, what would be the result? A. It would increase the net worth.

(Testimony of Gerald E. Gorans.)

Q. And if net worth were computed, and if income were computed by the net worth method, what would it do to income?

A. It would increase the income.

Mr. Patten: This is a convenient stopping place.

The Court: Ladies and Gentlemen of the Jury:

It is now four o'clock. We will recess until next week, Tuesday, at 10:00 o'clock. At this time again I caution you that you are not to confer among yourselves and you are not to discuss with anyone any issue involved in this case. You are not to form or express an opinion to any issue that may be involved in this case until it is finally submitted to you for your verdict. Be cautious, particularly on these long weekends that you do not read any news accounts, that you do [1816] not listen to any newscasts that may in any way relate to this case or to any of the issues involved.

With that admonition, you may be excused until Tuesday at ten o'clock.

(Whereupon, the Jury retired from the courtroom.)

Mr. Cox: I wonder if we could impose upon Mr. Somervel and Mr. Bell to make the exhibits available in the Clerk's office over the week-end?

The Court: Is there any reason that cannot be done, Mr. Bell?

The Clerk: No.

The Court: All right, the exhibits will be taken to the Clerk's office.

Mr. Cox: Thank you.

The Court: The trial will recess until Tuesday; Court until 10:00 o'clock Monday.

(Whereupon, at 4:05 o'clock p.m. March 19, 1954, proceedings in the within-entitled and numbered cause were recessed until 10:00 o'clock a.m. March 23, 1954.) [1817]

* * * * *

The Court: Call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the courtroom?

Mr. Griffin: Yes.

Mr. Moriarty: Yes, your Honor.

Mr. Brody: Yes, your Honor.

Mr. Brody: May it please the Court, I believe there was one subject on which Mr. Gorans was to prepare some information over the weekend, and I think it would facilitate examination if I questioned on that, and Mr. Patten continued his cross.

The Court: That is agreeable. You may proceed, Mr. Brody. [1822]

GERALD E. GORANS

upon being recalled, and having been previously duly sworn, testified as follows:

Direct Examination—(continued)

Q. (By Mr. Brody): Mr. Gorans, have you completed a study of the wages and salary of those

(Testimony of Gerald E. Gorans.)

persons who participated in the accounting function of Issaquah Creamery in the years 1945 to 1949?

A. Yes.

Q. And will you state for each year in that period, the total wages for salary so paid?

Mr. Moriarty: Objected to as immaterial.

The Court: Is it for the period covered by the Indictment?

Mr. Brody: Yes, your Honor.

The Court: Objection overruled.

A. In the year 1945, Issaquah Creamery Company paid \$6,727.75; in 1946, they paid \$9,315.00; in 1947, they paid \$10,913.50; in 1948, they paid \$11,465.00; in 1949, they paid \$13,310.00.

Q. (By Mr. Brody): Do you have a total of those wages and salary paid during the period 1945 through 1949? [1823]

Mr. Moriarty: Same objection.

The Court: The total of the figures just given?

Mr. Brody: That is correct, your Honor.

The Court: Objection overruled.

A. During this five-year period, Issaquah Creamery Company paid a total of \$51,731.25.

Q. (By Mr. Brody): And, Mr. Gorans, have you made a similar study of wages and salary paid to those employes who participated in the accounting functions of Alpine Dairy during the years 1945 through 1949? A. Yes.

Q. And will you please state those wages and salaries for each of those years?

A. In 1945, Alpine Dairy paid \$32,756.96. In

(Testimony of Gerald E. Gorans.)

1946, they paid \$39,318.63. In 1947, they paid \$50,-322.01. In 1948, they paid \$56,534.94. And in 1949, they paid \$65,304.06.

Q. And do you have a total of those wages paid by Hans Forster doing business as Alpine Dairy in the years 1945 through 1949? A. Yes.

Q. Will you state it, please?

A. The total for the five-year period was [1824] \$244,967.85.

Q. And do you have a total of the figures which you have given for both Issaquah Creamery Company and Hans Forster doing business as Alpine Dairy in the years 1945 through 1949?

A. Yes.

Q. And what is that grand total?

A. \$295,967.85.

Mr. Brody: Thank you. Your witness.

Q. (By Mr. Brody): Is that inclusive of the salary paid to L. Hicks Taylor, the figures you have just given?

A. It does not include the amounts paid to Mr. Taylor.

Cross Examination—(continued)

Q. (By Mr. Patten): Mr. Gorans, why do businesses keep records?

A. To determine whether or not they are making a profit in the business that they are running. Also, the records are used as a means of determining whether one particular operation is profitable against some other operation; and also used as being a guide by management in policy matters and

(Testimony of Gerald E. Gorans.)

procedural matters and so forth in conducting their business.

Q. Would an additional reason be to check on the [1825] honesty of employees and to be certain you are getting all the money due you?

A. Yes.

Q. And would an additional reason be to determine how much you have delivered to customers, and how much customers owed you and how much customers have paid you?

A. Speaking in dollar amounts, yes.

Q. When was the first Federal Income Tax Law passed, sir?

A. It was March 1st—

Mr. Keesling: I can't hear Mr. Gorans.

Mr. Patten: Mr. Keesling can't hear you.

A. (Continuing) I believe it was March 1, 1913, the one we are presently bound by. There were laws passed previous to that time, but were declared unconstitutional.

Q. (By Mr. Patten): And business firms kept books prior to that date?

A. Yes, they did.

Mr. Patten: Could I have Exhibit 278, please, sir?

(Whereupon, exhibit was handed to Mr. Patten by the Clerk.)

Q. (By Mr. Patten): Mr. Gorans, when we recessed on Friday, I believe you testified that the evidence showed that Mr. [1826] Forster and certain corporations in which he owned stock had paid during the period covered by this Indictment \$247,-

(Testimony of Gerald E. Gorans.)

761.00 in income taxes during the years 1945 to 1949. Is that a correct figure, sir?

A. I think the figure I gave was \$243,595.00.

Q. The corporations whose taxes are included in this total I believe are Issaquah Creamery, Simonson and Forster, Renton Ice and Ice Cream, Apex Farms, Arctic Gardens, Alpine Ice Cream Company, Finstad and Utgard; is that correct, besides Mr. and Mrs. Forster's taxes?

A. I believe that only one year for Apex Farms is included in that total.

Q. Handing you Exhibit 278, those are the corporations listed on items 49 through 55, isn't it?

A. There was no income tax paid by Arctic Gardens, which is on here.

Q. That was operated at a loss? A. Yes.

Q. On Exhibit 278, down below that, I notice other corporations in which Mr. Forster owned stock. Do you not, sir? A. Yes.

Q. New England Public Service, item 68?

A. Yes. [1827]

Q. First of Boston Corporation, item 69?

A. Yes.

Q. Bunker Hill & Sullivan, item 70, you didn't include any of the taxes paid by those corporations?

A. No.

Q. Just the ones which we may call Hans Forster enterprises? A. Yes.

Q. Now, having furnished the Court and the Jury with the total amount of taxes paid by Mr. and Mrs. Forster and the corporations whose names

(Testimony of Gerald E. Gorans.)

we have just mentioned, that being corporations known as the Hans Forster enterprises, I wonder if, from your examination of the exhibit, you can furnish us a figure to show the additional taxes owed by Mr. and Mrs. Forster and these corporations from the year 1945 to 1949?

A. I do not have any such computation.

Mr. Patten: (To co-counsel) Oh? Yes. Exhibit No. 5.

(Whereupon, Exhibit was handed to Mr. Patten by the Clerk.)

Q. (By Mr. Patten): Mr. Gorans, I am handing you Exhibit No. 5, which has been identified as the joint income tax of Hans and Evelyn Forster for the calendar year 1949. This [1828] return—on this return the income of Mr. Forster for the calendar year 1949 is reported as \$71,445.09 and the tax liability is reported as \$28,409.80; is that correct?

A. That is the amount that shows on the return before corrections.

Q. Before the deductions?

A. No, before corrections made by the—apparently by the—Collector.

Q. Yes, sir; now, Mr. Gorans, from the documents here in evidence, have you determined Mr. Forster's liability, income and income tax liability, for the year 1949?

A. From the documents here in evidence?

Q. Yes, sir. A. No, I have not.

Q. Have you similarly determined Mr. Forster's

(Testimony of Gerald E. Gorans.)

income tax liability, income and income tax liability, for any of the years 1945 to 1949?

A. Taking into consideration the various adjustments, no.

Q. Have you similarly determined the taxable income and income tax liability of the Issaquah Creamery for the years 1949 to 1946? A. No.

Q. And there were 19 people employed on this audit and your firm received \$70,000? [1829]

A. That is correct.

Mr. Patten: That is all. I have finished my inquiry.

The Court: Mr. LeSourd or Mr. Cox?

Cross Examination

Q. (By Mr. Cox): Mr. Gorans, I believe that you testified that among other things, you had examined the system of handling miscellaneous income at Alpine Dairy? A. Yes.

Q. And you said it was recorded by Mrs. Wilcox but not included on her reports which are picked up on her general ledger as miscellaneous income?

A. It is included on her report, although there was no breakdown as to the nature of the items.

Q. In other words, it was included in figures for sales or some other type of income on the reports?

A. No, it was on the sheet that she showed her received cash and amount of cash actually deposited in the bank.

Q. It was included then in the figure of debit to cash received?

A. No, it was not. It was included in the actual

(Testimony of Gerald E. Gorans.)

amount deposited in the bank but not included in the other figures. [1830]

Mr. Cox: I wonder if I could have Defendants' Exhibit A-37?

Make that A-36. It would be one of those monthly re-caps. This will do just as well.

(Whereupon, exhibit was handed to Mr. Cox by the Clerk.)

Q. (By Mr. Cox): Handing you what has been marked as A-36, Mrs. Wilcox's re-cap for December, 1949, can you tell me where the figure for miscellaneous income appears there?

A. Miscellaneous income is included in this two columns, "Paid in" and "Paid out," and gives the amount shown in this column.

Q. That is the second, the third columns from the left; is that correct?

A. That is correct. The amount shown in the first column here is the cash collected through the normal course of business, cash sales, collections on accounts receivable, and a like nature, and miscellaneous items were placed in this particular column and items paid out for expenses were placed in this column, and the first column plus the amount paid in, minus the amount paid out, is the amount of the deposit that was actually sent to the bank, and the—— [1831]

The Court: (Interposing) Mr. Cox, you are in the way of one of the jurors.

Mr. Cox: Sorry.

A. (Continuing) And the column appearing—

(Testimony of Gerald E. Gorans.)

the first column here,—the figures appearing in this column were the ones recorded in the general ledger.

Mr. Le Sourd: A little louder, please, Mr. Gorans.

A. (Continuing) And the amount shown for deposit was also recorded in the general ledger, but the amounts appearing in these two columns were not recorded in the general ledger.

Q. (By Mr. Cox): The figures for normal cash receipts and total deposit to the bank do appear in the general ledger? A. Yes, sir.

Q. You testified as to the importance of reconciling certain accounts as an accounting practice, particularly the accounts headed, I believe, on these books as bank, cash, accounts receivable and accounts payable; is that right? A. Right.

Q. And you said, for instance, that there was a general lack of reconciliation of the bank accounts in the [1832] various enterprises in which Mr. Forster was interested?

A. There is no indication that no reconciliation had ever been made.

Q. You heard the testimony of Mrs. Simonson the other day, did you? A. Yes.

Q. Wasn't it her testimony that Mr. Utgard originally reconciled the bank account but thereafter she took care of that at Finstad and Utgard?

A. The only thing she left out was the fact she did not reconcile it with the general ledger.

She reconciled it with the figures she was keep-

(Testimony of Gerald E. Gorans.)

ing, but so far as I know, there was no reconciliation at Finstad and Utgard of the bank account with the amount in the general ledger.

Q. The office of Finstad and Utgard received copies of Mr. Taylor's monthly typewritten statements for the corporation, didn't they?

A. I assume they did.

Q. And those carried the figures that appeared in the general ledger for those accounts; it had a figure for bank and cash?

A. Sometimes the figure for cash and bank was combined in those statements.

Q. And other times, they were stated separately? [1833]

A. That is correct.

Q. Now, was it also true that so far as this matter of reconciliation of the check register itself was concerned, that that was done generally at a good many of the other companies?

A. I know it was done at Renton Ice and Ice Cream Company, because it was done on the back of the bank statement.

Q. How about Apex Farms, was there a process of reconciliation?

A. Mr. Keck reconciled that.

Q. What about Simonson and Forster?

Did Miss Buchanan do that?

A. I don't recall whether they did it, or Mr. Taylor did it. I don't remember.

Q. But you do believe that at least that partial reconciliation was made in the instance of Simonson and Forster, as well?

(Testimony of Gerald E. Gorans.)

A. I am not sure whether it was, or not.

Q. Now, I believe you said that a person would have to have both the general ledger and supporting detail in order to make a reconciliation of the bank account; is that correct?

A. That is correct.

Q. Now, by the supporting detail, I take it you mean [1834] the check register to show checks issued which have not cleared the bank, cancelled checks, and bank statements themselves?

A. That is right.

Q. Just the process that you and I go through when we try to check the bank's statements to us at the end of each month, sitting down with our cancelled checks and our check books and what the bank has sent us?

A. That is correct.

Q. And all that would be necessary for the person making that kind of reconciliation at any of these companies to determine whether or not there was any discrepancy between the result that they got as showing the correct balance at the bank or the correct balance in the cash account and that which was carried on the general ledger would be to compare this with the typed statements issued monthly by Mr. Taylor for each of these companies?

A. Providing everything agreed perfectly, that is all you would need, but if it would not agree, then you would have to have the general ledger to see what figures are placed in it.

Q. Then they could have called that to Mr. Tay-

(Testimony of Gerald E. Gorans.)

lor's attention and conducted some investigation to see what the explanation was? [1835]

A. They could have, but I don't think they received the statements every month.

Q. Now, isn't it true that these supporting details, the bank statements, the cancelled checks, the check registers, were maintained in the office at Issaquah or Conway, or Renton, or Puyallup, and were not maintained in Mr. Taylor's office in Seattle?

A. So far as I know, that is correct.

Q. I believe you testified that there was no reconciliation of accounts payable at the Renton Ice and Ice Cream Company?

A. That is correct.

Q. Now, didn't your investigation of that company's books show that as a matter of fact at the end of nearly every month there were accounts payable which were owed by the company but which had not been entered by Mr. Schneider or anyone else in the office in that little ledger he kept, which are in evidence here as Exhibits 212 and 212-A?

Mr. Cox: Could I have this?

A. I think I understood the original question to apply to Alpine Ice Cream and not Renton.

Q. (By Mr. Cox): I said "Renton." Would you change your answer as to lack of reconciliation at Renton Ice? [1836]

A. I don't think it was reconciled. If it had, there would not have been the differences between these books and the general ledger.

(Testimony of Gerald E. Gorans.)

Q. Now, my second question was, whether or not in your investigation, didn't you find that there were accounts payable owed by the corporation at the end of almost any month but which are not listed in those books?

A. Not in any material amounts. There could be miscellaneous invoices that were not received in time to be recorded in here, but basically, as I understood it, this was kept continuously during the month and when an invoice was received, it was recorded here.

At the end of the month, they received the statements from certain suppliers which would summarize the various invoices recorded in here.

Q. Isn't it true that there were certain recurring expenses they had for which they received no invoices but which were paid regularly in the following month?

A. The only thing I can think of would possibly be a light bill, power and light, and they would receive an invoice on that.

Q. Didn't they rent an ice box some place and distribute ice through it and they made a flat payment plus [1837] a percentage of the proceeds?

A. I believe so.

Q. And that was never entered in the accounts payable?

A. I think it was sometime, at various times.

Q. Not regularly, however?

A. I didn't check to see whether it was done regularly every month or not.

(Testimony of Gerald E. Gorans.)

Q. Is it true, based on your investigations, that some of the accounts that are entered in that book were not paid in the following month, but were carried over, and were paid perhaps along with other obligations accruing in the months thereafter?

A. Generally, there were very, very few invoices carried forward into subsequent months. They were generally paid.

Q. There were some, however?

A. There could have been some.

Q. Will you tell us what the document is that you are examining?

A. This is a report that we issued as a result of our investigation of the accounts payable and inventory out at Renton Ice and Ice Cream.

Mr. Cox: I wonder if we could have this marked, Mr. Bell? [1838]

The Clerk: Defendants' Exhibit No. A-50 marked for identification.

(Defendants' Exhibit A-50 marked for identification.)

Q. (By Mr. Cox): I believe you stated that the general ledger that you examined in connection with your investigation contained inadequate posting details; is that correct? A. That is correct.

Q. Now, taking for example, Exhibit 272, which is the general ledger of the Alpine Dairy, those details, if they had been posted as you feel they should, would have been posted in these narrow columns marked folio and checks made in this other

(Testimony of Gerald E. Gorans.)

narrow column, is that correct? A. Oh——

Q. (Interposing) And the material written in under the heading “Items”?

A. The source of the entry placed in here should have been recorded in the general ledger. So far as checking it off here, this check mark is provided purely for the person making the posting to use as an indication that something has been recorded here, and also recorded in the other subsidiary records.

Q. Would you indicate to the Jury the location of those columns you are referring to here? [1839]

A. The column for recording the source of the information placed in the general ledger is right here. Any unusual items or items that should have an explanation in here would be placed in this column.

The Court: Can we identify that so that the record would show what he is referring to?

Mr. Cox: I did.

The Court: The columns?

Q. (By Mr. Cox): One is headed: “Folio,” and the other “Items”; is that correct?

A. Yes; this particular page applies to the bank accounts.

Q. Yes; now, as you say, these posting entries would have reference to the volume and page of other supporting records from which these figures had come, is that correct?

A. That is correct.

Q. And the items thus to be recorded are for

(Testimony of Gerald E. Gorans.)

convenience back and do not enter into the financial picture reflected by the books, do they? They are not included in any totals in these books?

A. That is right; they are not.

Mr. Cox: May I have 271, please?

(Whereupon, document was handed to Mr. Cox by the Clerk.) [1840]

Q. (By Mr. Cox): You testified, I believe, Mr. Gorans, to a number of what you termed major deficiencies in the books of Issaquah Creamery Company, is that correct? A. Yes.

Q. And the first of these was that you stated that there had been no reconciliation of cash and that when you reconciled cash on hand at the end of December, 1949, you found that the ledger showed some \$4,742.68 more cash as being on hand than actually was on hand in the till in the office; is that correct? A. That is correct.

Q. You then testified that the general ledger showed for the same period, so far as you could reconcile it, some \$4500 less cash in the bank than was actually in the bank? A. That is correct.

Q. But, on cross-examination by Mr. Patten I believe you testified that these two differences cancelled each other out except for a net of some \$245.00; is that correct?

A. The over-all effect on the total.

Q. Yes.

A. Were expenses of the corporation that would theoretically cancel. [1841]

Q. There would be no effect on the income of

(Testimony of Gerald E. Gorans.)

the corporation as a result of the determination that the cash was in the bank or in the till as long as it appears somewhere in the records of the company as an asset?

A. It is a good idea to know what you have actually cash on hand, or in the bank.

Q. But it doesn't affect income?

A. No, it doesn't affect income if they actually offset each other in exact amounts.

Q. The next discrepancy you noted was that the accounts payable as of the end of December, 1949 were overstated in the general ledger by some sixty thousand dollars?

A. That is correct.

Q. I believe you admitted, however, on cross-examination by Mr. Patten, didn't you, that this was due to the duplication in Mr. Erickson's journals of the invoices of Consolidated Dairy Products and R. L. Stevenson, about which Mr. Conway, the handwriting expert, testified; is that true?

A. That accounted for substantially most of it.

Q. And Mr. Taylor's general ledger reflected the entries regarding Consolidated Dairy Products in the amount of approximately \$51,000 and the R. L. Stevenson in approximately \$18,000 in the same manner they were reflected [1842] on Mr. Erickson's journals; didn't they?

A. They agreed, the figures recorded in the journals had been recorded in the general ledger. However,——

Q. (Interposing) And the reason there was no supporting detail——

(Testimony of Gerald E. Gorans.)

Mr. Keesling: (Interposing) If the Court please, he didn't finish.

Mr. Cox: I am sorry.

A. (Continuing) However, the general ledger shows that Mr. Conway pointed out the figures were changed upon the advice of someone. He left out an invoice of \$51,000 and there was no inquiry as to why someone would keep a set of records and leave \$51,000 out.

Q. (By Mr. Cox): However, the change made in Mr. Taylor's ledger, after you had initially compared the figures he took off the books when he went out at the end of January, 1950, was made in accordance with changes that had been made in Mr. Erickson's journal?

A. I don't know the date he made the changes. The journals and the ledger, after both were changed, were in agreement so far as the figures were concerned.

Q. And so the reason why there was no supporting detail for this part of the accounts payable stated in the general ledger is that there was no supporting detail [1843] apparently for the entry made in Mr. Erickson's journal?

A. I don't understand what you mean by "supporting detail."

Q. I mean, there was no proper invoice not already paid for these two items?

A. There couldn't have been if the invoice had been recorded twice.

Q. Now, I may say I think the other discrep-

(Testimony of Gerald E. Gorans.)

ancy that you pointed out was that you found that the general ledger figure for milk drafts and the figure supported by the details that you examined was from nine to ten thousand dollars apart; is that correct? A. That is correct.

Q. And here, again, that was apparently due to the items of five thousand dollars to the milk draft account in November, and in December, 1949, in the manner also testified to by Mr. Conway?

A. Yes.

Q. Can you tell us, Mr. Gorans, of any specific instance where Mr. Taylor's general ledger for the Issaquah Creamery and Alpine Dairy did not accurately reflect the summary figures that were contained in Mr. Erickson's journals, or in the adding machine tapes that were supplied to Mr. Taylor, of which Exhibit A-16 is an example? [1844]

A. Yes, I can.

Q. Would you tell us one of those?

A. Well, if you would give me the cash disbursement book for 1949 for Alpine Dairy.

Q. That is 213, I believe. No. Yes.

(Whereupon, document was handed to the witness by Mr. Cox.)

Q. (Continuing) Is that the one you wanted?

A. Yes.

The Court: Exhibit 213?

Mr. Cox: Yes, your Honor.

A. (Continuing) January 31, 1949, for Alpine Dairy, there is a total shown in this book as a debit to accounts receivable of \$12,131.00. That amount

(Testimony of Gerald E. Gorans.)

has been posted as a debit to wholesale sales. The same amount, \$12,130.00, there is no entry in such amount in the accounts receivable as a debit, which this indicates there should have been, and I think you will find that true in practically every month.

Q. Isn't it true that the items entered in the column accounts receivable in Mr. Erickson's journals reflected largely advances to dealers to finance the purchase of freezer equipment, and things of that sort, or personal loans, or some kind, made by Mr. Forster?

A. I think most of the reported loans to customers [1845] are reported payments for equipment sold to customers on a customer's sales contract.

Q. Do you know whether those figures entered into the figures reported by Mrs. Wilcox as wholesale sales of Alpine Dairy?

A. Some of them were.

Q. To the extent, therefore, that they had been entered in the figures for wholesale sales, wouldn't it be necessary to enter these items as a debit to that account in order to take it out and to avoid paying sales tax on an item which was not actually a sale of products but a financing transaction?

A. They should never have been put into wholesale sales in the first place.

Q. And this is an attempt to correct that, isn't it?

A. It is an attempt to do something to balance the thing out without going into any details to find

(Testimony of Gerald E. Gorans.)

out whether or not he does have the correct figure.

Q. Does this affect income of the Alpine Dairy for the year?

A. In the end the way it was handled in a way, it would.

Q. In which way?

A. In that sometimes as a result of not checking [1846] the actual figures shown here by Mr. Erickson with the amounts included in contracts receivable down at Alpine Dairy, there were items of equipment purchased for customers that were charged to expense and improperly recorded down at Alpine Dairy, and as a result in the end, it affected income.

Q. This was because of an improper recordization at Alpine which was passed on to Mr. Taylor and entered by him in the ledger, is that correct?

A. Where the improper part comes in is that it was not checked to determine whether or not he was getting information in the proper manner.

Q. But the initial mistake was made by someone at Alpine, is that correct?

A. Well, the work was done at Alpine.

Q. The work was done at Alpine, and it was passed on to Mr. Taylor in some kind of a total which you say he did not check?

A. That is correct.

Q. Would you say then that aside from this practice of entering totals taken from Mr. Erickson's journal column accounts receivable, and perhaps another account in the ledger, but where the

(Testimony of Gerald E. Gorans.)

figure actually was entered, I take it in each instance that appears in the ledger some place, doesn't it? [1847]

A. I think you can generally say that the figures included in this are in the general ledger some place.

Q. So that the figures that were furnished to Mr. Taylor by Mr. Erickson were through the totals at the end of the month in the cash disbursement journal such as the one you have before you, or in the adding machine tapes used to provide a breakdown of the detail of the miscellaneous column—those figures do appear in some form or another in Mr. Taylor's ledger so far as your check has shown?

A. Well, there is one particular item right here on this page that I opened that does not appear in the general ledger except—

Q. (Interposing) This is again January, is it?

A. Yes.

Q. 1949?

A. (Continuing) ——except as a debit to wholesale sales.

This particular item was—I don't know how the transaction originated or anything like that, but in analyzing the amounts Mrs. Wilcox recorded in the "Paid In," she received an item of \$4,000 from the Washington Escrow Company that was never recorded in the general ledger, and the account, when paid out, shows in the cash disbursement book and was charged to wholesale sales, and when the

(Testimony of Gerald E. Gorans.)

cash [1848] came back, it was in "Paid In" "Paid Out" basis, and deposited in the bank, but never recorded in the general ledger as having been received back from this organization that the money was advanced to.

Q. Would you say, Mr. Gorans, that a good many of these discrepancies, as you call them, resulted from the fact that the income book—the bookkeeping as to income of Alpine was at one office in Seattle, and the procedure as to disbursement at another office in Issaquah?

A. That is correct. There was no correlation to see whether the information from the two sources was coming in in the proper order so that you could effectively handle the information from each place and place it properly in the general ledger.

Q. Now, turning to the relationship that you testified to in a number of instances between Mr. Taylor's ledger for Alpine Dairy and the re-cap or reports which he received monthly from Mrs. Wilcox, you stated, for example, I believe, that as of October 31, 1949, the general ledger for Alpine, which is Exhibit 272, which you have before you, shows a negative balance in the cash account, is that correct? A. Yes.

Q. Now, what is the balance shown in that ledger account for the preceding month? [1849]

A. The month of September?

Q. Yes.

A. It shows the debit balance of actually cash on hand of \$22,232.84

(Testimony of Gerald E. Gorans.)

Q. Now, as appears on that ledger sheet, Mr. Taylor added to this the figure \$311,402.81, representing cash receipts which he took from Mrs. Wilcox's monthly report, didn't he?

A. That is where it came from.

Q. And that is the figure that appeared?

A. It is one of the figures that appeared on there. The other information is also there.

Q. He then subtracted the figure \$354,668.63 which was the correct month-end total, taken from the credit to cash column in Mr. Erickson's journal, wasn't it, which is Exhibit 213, you have it there?

A. That is correct.

Q. And if he correctly makes the addition and subtraction indicated in that manner, you get a credit balance for the account of \$21,032.98?

A. That is right.

Q. And, since cash is an asset account, you have referred to this, as a negative balance, because it should be a debit balance?

A. It is a physical impossibility to have less than [1850] zero cash. You can get to zero, but not below it.

Q. That is true to the terms of the man standing at the till counting the cash.

A. Actually in the same terms, so far as the cashier is concerned. They have cash or zero, but not less than zero on hand.

Q. Isn't it possible for the relationship between information coming to the general ledger from sub-

(Testimony of Gerald E. Gorans.)

sidiary journals to produce for the time being at least a figure of that kind?

A. If you don't correct it, what it is, so far as an accountant is concerned, it is a flag to the fact that there is something wrong with the figures he is putting in the general ledger.

Q. And you don't know whether Mr. Taylor made any effort after he made this entry to find out the situation?

A. Apparently not, or it would have been corrected before it was.

Q. You testified to a negative balance, November 30, 1949, and to a small cash balance December 31, 1949, which you said was understated?

A. That is correct.

Q. This situation then involving the cash account to which you testified covered this three-month period, [1851] October, November and December, 1949, is that correct?

A. That is correct.

Q. Didn't you find in your investigation that at that time Alpine Dairy was participating in a large contract for furnishing milk, either to the Seattle Public Schools or to some Army installation here in which they were cooperating in supplying the milk with three other dairies?

A. That is right.

Q. That is, the contract was entered into in Alpine's name, but the milk was delivered by Alpine, Carnation, and Kristoferson?

A. That is correct.

(Testimony of Gerald E. Gorans.)

Q. Didn't you find out that Alpine billed for the entire quantity of milk delivered and that payment for the entire supply was sent to Alpine?

A. That is correct. The cash was recorded by Alpine Dairy. In all but one month it was shown as actual cash received. In that particular month of October, it was deducted from the normal receipts and put into the "Paid-In" column, and as a result, not placed in the general ledger.

Q. That was by someone at Alpine?

A. It was shown as a deduction on the schedule or the report prepared by Mrs. Wilcox, but when these companies were paid for their share of the collection, that [1852] was paid by check from Issaquah Creamery Company.

Q. From the Issaquah office?

A. From the Issaquah office.

Q. But drawn on the Alpine Dairy Account?

A. That is right.

Q. And the net result was that it was credited out from cash as having been deposited in the bank and thereafter paid out of the bank account for the Issaquah, a larger sum than debited and based on reports received from the office on Rainier Avenue?

A. That is right, only when it was paid out, it was charged against purchases, and as a result, ended up as expense, and yet, when received at Alpine, not recorded as income, and as a result, you have an overstatement of expenses.

Q. It was not income actually to Alpine?

(Testimony of Gerald E. Gorans.)

A. It was not income but recorded as income.

Q. I thought you said it wasn't?

A. In all months except October, and when disbursement was made, it was charged against expenses, so that collections for the month of October actually show up as expense, but the income was never recorded as income.

Q. In the other months, did it represent the income, it not having been truly income to Alpine? It was proper then for them to charge the payment off as an expense to offset it? [1853]

A. If the income was placed in the income, that is perfectly permissible to charge the offsetting check to expenses.

Q. Would you agree then that the situation that arose then in the month of October and which took some time to straighten out, resulted from this large contract and a mistake in handling of the receipts and "Pay-Outs" representing the share of the other three dairies?

A. Well, the only thing is it is a mistake, all right, but I can't understand why it carried forward for six months before it was corrected.

Q. Well, the first time it appeared as a negative balance on the cash account was in October?

A. That is correct, and we corrected it when we started work in April, 1950. They were still carrying a negative cash balance in 1950.

Q. They were still counting it as receipts and charging it off as expense?

A. No, they still had a negative cash in 1950,

(Testimony of Gerald E. Gorans.)

but during 1950, these items were recorded properly, but there had been no correction for improper entry in October, 1949.

Q. You testified at the end of December, the cash account of the ledger did show a positive balance?

A. Oh, yes, of \$1700. They actually had something [1854] like \$27,000 on hand.

Q. You arrived at that \$27,000 figure from the Exhibit 41. Do you have that?—kept by Miss Krall?

A. No.

Mr. Cox: I am sorry. I don't need it. That referred to the Creamery.

Q. (By Mr. Cox): How did you arrive at the figure of cash on hand, December 31, 1949, that you have compared to this \$1700?

A. Merely by determining which deposits were not recorded by the bank until the subsequent month, and when you totalled those deposits and compare it with the general ledger, that is all there is to it.

Mr. Cox: May I have A-45?

Q. (By Mr. Cox): Handing you what has been marked Defendants' Exhibit A-45, the bank statement of Alpine Dairy, when you testified that the actual cash on hand on October 31st was \$9,566.82, you arrived at that simply by taking the deposits shown in the bank statements for the following month as having been made on November 1st, is that correct?

A. That is right.

Q. And, similarly, when it came to December,

(Testimony of Gerald E. Gorans.)

you have what the balance shows on November 31st; you gave us a [1855] figure based on the initial deposit made in December?

A. Well, there might be more than one deposit; it depends on whether the end of the month fell on Saturday or Sunday.

Q. I believe the testimony was that the figure you gave was \$13,346.11, wasn't it?—if my memory serves me.

A. \$13,346.11.

Q. And that was in fact the first deposit made in December?

A. That is right; deposit recorded by the bank on December 1, 1949.

Q. All right; and, referring to the bank statement for January, 1950, how did you derive the figure of \$27,000 which you testified to as having been the actual cash on hand at the end of business on December 31, 1949?

A. Can I see Mrs. Wilcox's report for December?

Q. Which one, the re-cap?

A. The one which—well, the—well, all the sheets for the month of December, 1949.

Q. Handing you A-36, is that the document to which you referred?

A. Yes. There was a deposit of \$19,756.20 made January 4, recorded in Mrs. Wilcox's summary as her receipts for the last day of December, 1949. There was a [1856] deposit of \$7,301.82, on January 3, 1950, which is recorded here as a receipt for the 30th of December, so it would be the 30th of December, 1949.

(Testimony of Gerald E. Gorans.)

Q. And, are there some other small deposits which do not enter your calculation then?

A. No, because I do not have any support as to what these particular items are.

Q. You don't know, for instance, where the——

A. (Interposing) Generally, from my experience with this, these smaller deposits here, one is \$200, one is \$175.40, represent N.S.F. checks returned to the bank.

Q. What about \$3,912.13 and \$7,208.16, the first of which was deposited January 3rd and the second January 4, 1950?

A. They were both deposited January 4th, and probably receipts for January 1st and 2nd of 1950 and the \$7,000 would be receipts for the following day. Mrs. Wilcox's summary for 1950 is not in evidence here, or I could point those out to you.

Q. So that your determination of the amounts actually on hand involved a reference to the bank statements which you testified were kept in the office of Issaquah and not in Mr. Taylor's office?

A. That is right, but Mr. Taylor went to the Issaquah office, so that they were available for him to [1857] look at. It didn't make any difference whether they were in his office, or at Issaquah.

Q. Do you know of your own knowledge they were available for him there, or is it a conclusion?

A. I would assume if they were not available that he would have decided to sever his relationship because the information was not given to him.

(Testimony of Gerald E. Gorans.)

Mr. Cox: I move to strike the witness's answer as anything he assumes must have been the case.

The Court: Insofar as it may be considered as testimony to actual matters, it may be stricken.

The Court—I mean the Jury—will disregard the testimony of the witness as to actual matters when he states that he assumed something. Does that cover it?

Mr. Cox: Yes, your Honor.

Q. (By Mr. Cox): Now, you then went on to discuss the status of the account in the general ledger for accounts receivable at Alpine as of December 31, 1949, and you stated, did you not, that there was a difference of \$10,354.98 between Mr. Taylor's ledger figures in Exhibit 252, which you have before you, and in Mrs. Wilcox's re-cap, which is Defendants' Exhibit A-37? A. Yes.

Q. And you said that this discrepancy resulted in [1858] an understatement of income in that amount; is that correct?

A. That is correct.

Q. Will you tell us where you find the figure on A-37 to which you testified as representing the balance shown there by Mrs. Wilcox for accounts receivable?

A. Well, there is one figure here of \$359,756.45, and another item of \$187.29, which is identified as Franklin Grocery Cabinet.

Q. And you added that figure—added that figure to the figure which Mrs. Wilcox shows as the

(Testimony of Gerald E. Gorans.)

final balance for all accounts receivable at the end of the month?

A. Well, since this was a record that was available at that time that is the figure as to accounts receivable that she had.

Q. Now, the figure of \$187 is circled there, isn't it? A. Yes.

Q. Wouldn't that in accounting practice normally indicate that it is a figure contra to those otherwise carried in that column and therefore would be subtracted rather than added?

A. It could be, but there is no indication here that it should be subtracted.

Q. Is there any indication there that it should be [1859] added?

A. Well, it is included in the ending balance in the accounts receivable.

Q. It happens to be in the same column below the figure she gives as ending balance for accounts receivable?

A. Yes, because this was considered an ordinary item, so far as she was concerned.

Q. And it was an extension of a transaction reflected three columns to the left, isn't that it?

A. Well, it is in the column covering the balance at the end of the month.

Q. But appears below the total she entered in her calculations of accounts receivable?

A. And it appears below the total that she made.

Q. Now, you then testified that Mr. Taylor's ledger, Exhibit 272, shows a figure at the end of this

(Testimony of Gerald E. Gorans.)

month for accounts receivable of \$349,588.76; is that correct? A. That is correct.

Q. Now, do you know how Mr. Taylor arrived at this figure? A. No, I do not.

Q. All right, referring you to Defendants' Exhibit A-37—I am sorry—I mean A-36—do you have A-36 there? [1860] A. A-34.

Q. Is this for October or December?

A. This is October.

The Court: We might take the recess now.

Mr. Cox: All right.

The Court: Ladies and Gentlemen of the Jury, we will now take the mid-morning recess. The Court calls your attention to the admonition given you on similar occasions, and asks you to heed such admonitions on this occasion. You may now be excused.

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, at 11:00 o'clock a.m. a recess in the within-entitled and numbered cause was had until 11:14 o'clock a.m., March 23, 1954, at which time counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may proceed.

(Testimony of Gerald E. Gorans.)

It is stipulated that the Jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor. [1861]

The Court: You may proceed, Mr. Cox.

Q. (By Mr. Cox): Directing your attention, Mr. Gorans, to Defendants' Exhibit A-37—which I believe you have there? A. Yes.

Q. Which is a part of Mrs. Wilcox's report for December, 1949, and to some figures in pencil at the bottom of the page, do those appear to be in Mr. Taylor's handwriting?

A. There are some figures here that appear to be in his handwriting.

Q. All right, referring to the general ledger account for Accounts Receivable is the first figure, \$378,600.69 the correct balance from the preceding month as shown in his accounts received record?

A. I don't know if it is the correct balance or not. It is the balance in here.

Q. It is the balance in that place?

A. In the ledger, yes.

Q. And then did he add in those small figures in the bottom, \$182,420.89? A. Yes.

Q. And that is the figure on A-36 showing the total of charge sales, isn't it; or you derive it from two figures in Mrs. Wilcox's brief summary there?

A. Yes.

Q. And then he subtracted the figure \$201,432.82, which is the total figure for wholesale and retail collections, which Mrs. Wilcox had sent him?

(Testimony of Gerald E. Gorans.)

A. The figures originally written was 201, but it has been changed to two hundred and six thousand.

Q. In the ledger, but I am referring to his calculation in the bottom of A-37.

A. There are some figures that have been written over there. It is a little difficult to tell what they are.

Q. But, in any event, by subtracting whatever that figure is, he arrives at \$359,588.76.

A. That figure appears here.

Q. And that is exactly ten thousand dollars more than the figure you testified to was the final balance he showed at the end of the year for accounts receivable?

A. That is correct.

Q. Now, you just indicated that he had written over one of the figures in the accounts receivable record in the ledger to increase this \$201,000 figure to \$206,000, a difference of five thousand dollars?

A. Right.

Q. That reduced the balance of accounts receivable then, according to his books, from the [1863] \$359,000 figure which he had on A-37 to \$354,000-some odd dollars and cents?

A. It could be.

Q. Now, he balanced the adjustment, however, didn't he, by increasing the debit to cash by the same five thousand dollar figure?

A. Well, he put five thousand into cash. I don't know if it is to balance this figure or not.

Q. Well, the net effect then, since one asset ac-

(Testimony of Gerald E. Gorans.)

count, accounts receivable account, has been reduced by five thousand dollars, and then another, the cash, increased in the same amount, there is no overstatement or understatement involved in that entry then, is there?

A. I don't believe I testified that there was.

Q. Well, you testified that the difference between Mrs. Wilcox's figure for accounts receivable and Mr. Taylor's accounts receivable resulted in an understatement of income of more than ten thousand dollars.

A. Whenever you understate an asset or overstate a liability, the end result is either an understatement or overstatement of income.

Q. But, now, isn't it correct, that your testimony went simply to the adjustments or entries that had been made to accounts receivable and did not attempt to take into any account any offsetting entries that might have been [1864] made elsewhere in the books?

A. I think my testimony stated that after making that entry, cash was understated twenty-five thousand and the accounts receivable ten thousand dollars; before the entry was made, the cash was thirty thousand and the accounts receivable understated five thousand dollars.

It still has the same effect on income, thirty-five thousand dollars.

Q. As to the ten thousand dollar figure, you specifically testified to as being understatement of income with respect to accounts receivable, you did

(Testimony of Gerald E. Gorans.)

say that the difference resulted in an understatement of income of ten thousand dollars or a little over?

A. Well, the balance of accounts receivable as recorded are ten thousand dollars less than the actual receivables of the company, and as a result, some place along the line, the income has been understated by ten thousand dollars.

Q. But, five thousand of that ten thousand dollars, there is no understatement if it is simply transferred to another asset account?

A. Well, I don't think you can transfer assets between accounts and say it has no effect on income because it may not affect it so far as the receivables is concerned but it affects it so far as the cash is concerned in this [1865] instance.

Q. If, however, you reduce one asset account and increase another asset account, reflecting, in this instance, let's assume a receipt of cash or accounts receivable, it would not overstate or understate cash—income for the business for this period, would it?

A. Well, if you just purely make a transfer in a general ledger from one asset account to another asset account, the transfer itself will not affect income or expense.

Q. Very well; now, you knew the other day, then, when you testified to this understatement of income of ten thousand dollars resulting from this difference that there was actually at least a partial offset to that in an increased debit to cash?

(Testimony of Gerald E. Gorans.)

A. So far as the cash account and accounts receivable—accounts received—the end result is that the accounts receivable are understated ten thousand dollars and cash twenty-five thousand dollars. Before this five thousand transfer was made, the cash was understated thirty thousand dollars and the accounts were five thousand dollars. So far as the net effect on income, it is still thirty-five thousand dollars, whether you transfer fifty thousand over from the cash to accounts receivable. The fact they were not reconciled with the actual amounts or [1866] the actual cash on hand, and the actual accounts receivable, still results in understatement of income.

Q. But you can't look at one account and say because there was a difference of so many dollars between the ledger figure for this and some subsidiary reports that were received and on which the ledger figures were based, that that in and of itself resulted in overstatement or understatement of income because it may be offset somewhere else in the books?

A. But where it is offset somewhere else in the books, that offset in that particular account will affect income or expenses in the same proportion.

Q. But, if the offsetting entries are made both in asset accounts, there is no net change in income for the company since you arrive at income at the end of the year on the balance sheet by subtracting liabilities from total assets, and it makes no difference whether it was in one or the other?

(Testimony of Gerald E. Gorans.)

A. Theoretically, no.

Q. On that basis, as to the remaining five thousand dollars of understatement of income, there appears in the ledger a separate credit of five thousand dollars which then reduces the balance of \$549,-588.76, to which you testified?

A. There is a five thousand dollar credit in here. [1867]

Q. Didn't your investigation reveal that this was credited by way of writing off a bad debt in that amount?

A. Yes, but there is no indication as to what particular debt was written off, and there is no indication as to the source of this. It is just a figure placed in the general ledger, and a figure in the bad debts. There is no explanation whether the entry is justifiable or not.

Q. The fact that there is no explanation appearing in the general ledger doesn't mean there is none?

A. If they are writing off bad debts that should have been shown on here——

Q. (Interposing) But, in answer to my question, the fact that you did not find and perhaps because of the lack of certain posting details have been unable to find what the basis for this entry is, does not necessarily mean that it is automatically unauthorized or improper?

A. Well, no.

Q. Now, I believe you also said that you reconciled the accounts payable for Alpine as of Decem-

(Testimony of Gerald E. Gorans.)

ber 31, 1949, and found that the general ledger showed a figure some fifteen thousand dollars greater than that shown in the supporting details?

A. That is correct. [1868]

Q. Did you make this examination of the supporting details personally yourself?

Did you check the actual invoices outstanding?

A. I took the cash disbursement book and took the accounts payable as shown—recorded—in there, for the month of December of 1949 and used that as a starting point and went back through the preceding month looking for items that had been recorded that had not been paid December 31st which consisted of payroll taxes, and then picked the items shown in that accounts payable paid—the actual payment of them sometime in 1950 and in so doing, we came up with the difference of fifteen thousand dollars.

Q. That is basing them on the check of Mr. Erickson's journal, and not on a check of actual invoices which were in the file on a particular day and not paid?

A. Well, that—invoices in a file and not paid, that doesn't have any particular bearing on whether it is an account payable or not.

Q. You mean the fact that the company received a bill it has not paid doesn't mean it shows the amount?

A. It shows the amount, but whether or not you have got to have it in the file physically—an in-

(Testimony of Gerald E. Gorans.)

voice—otherwise, it is not an account payable, that is not true.

Q. No, but I mean that the presence in the office [1869] of records of billings or of invoices sent to the company without an indication that they were paid would be a showing that those were accounts then payable by the business, Alpine Dairy, in this instance?

A. As I understand your question, if they have invoices from vendors in their office, and have not been paid, they are accounts payable.

Q. And there may be accounts that they know are outstanding for which they have not yet received statements or invoices but which on accrual basis, would it be payable? A. It could be.

Q. And you didn't check those?

You used——

A. I checked the actual payments as recorded in 1950, that applied to accounts payable prior to that time, and we went back to other years, also. And this accounts payable difference is carried on for a period of time.

Q. This was a check that you made through the entries showing either credits to accounts payable or the payment of those accounts by check taken from Mr. Erickson's journals?

A. That is right.

Q. Now, you also testified, didn't you, to a comparison between Mrs. Wilcox's 1949—December, 1949— [1870] re-cap, which is A-36, which I believe you have, and Mr. Taylor's ledger for Alpine,

(Testimony of Gerald E. Gorans.)

Exhibit 272, with respect to what you feel were discrepancies in the December 31, 1949, figures for wholesale sales accounts receivable and cash; is that correct? A. That is correct.

Q. And you stated that these three items taken together resulted in an understatement of income by seven thousand dollars?

A. That is right.

Q. Now, you first said, I believe, that Mr. Taylor's general ledger showed cash receipts of \$327,678.78, whereas Mrs. Wilcox showed a figure exactly five thousand dollars less?

A. That is correct.

Q. That is simply, then, one side of the adjustment to accounts receivable I asked you about awhile ago where you testified there was an increase from 201 to 206 thousand in a credit to accounts receivable—this is an offset, an increase from 322 to 327 thousand in cash receipts? A. Yes.

Q. Now, you next testified that Mr. Taylor's ledger showed a credit to accounts receivable, twelve thousand dollars greater than Mrs. Wilcox's figure for [1871] collections on accounts receivable?

A. That is correct.

Q. And five thousand of this was this five thousand dollar transaction regarding cash?

A. That is correct.

Q. And that left the difference of seven thousand dollars which you testified to as being an understatement of income?

(Testimony of Gerald E. Gorans.)

A. Well, sales were understated by seven thousand dollars.

Q. That is, accounts receivable, a credit figure seven thousand dollars larger than Mrs. Wilcox's file and wholesale sales had a figure seven thousand less?

A. That is correct.

Q. (Continuing) —than her figure?

In other words, Mr. Taylor appears to have made some adjustment at the end of 1949 which reduced both the charge sales and accounts receivable by seven thousand dollars?

A. He reduced sales and he increased the items shown as collections on accounts receivable.

Q. Which reduced accounts receivable?

A. Which reduced accounts receivable.

Q. Now, didn't you find that this was also a part of this continuing adjustment on this 4-way milk contract? [1872]

A. No, I did not.

Q. Did you find what the purpose for this adjustment was?

A. No, I could not find the purpose for it.

Q. Again, this is the situation where you have not been able to track it down, and, therefore, not able to tell this Jury that there was not a basis for the entry as made?

A. Well, I would assume that if there was a basis for it, that it would be shown some place in the records. There is plenty of records to show it, if there had been any basis for it. It is a very simple matter to indicate why you change figures from one record and place in another.

(Testimony of Gerald E. Gorans.)

Q. Isn't it true that you and other representatives from your office have stated on a number of occasions that you could not understand Mr. Taylor's work papers, and couldn't make head nor tail of them? A. Many of them I couldn't.

Q. Isn't it possible that perhaps some of these explanations for these entries are on the work papers in a form which, perhaps, to anyone other than Mr. Taylor is not understandable?

A. They couldn't be understandable to anyone else, that is for sure. [1873]

Q. That is, you mean you don't understand them, and, therefore, you do not think Mr. Marx or Mr. Eppler understood them, either?

A. Well, Mr. Marx and I worked together on this quite a bit, and we put two and two together quite a while, and thought we knew the answer.

Q. You heard Mr. Marx's testimony that, so far as his investigation went, that it revealed that Mr. Taylor's ledgers were in agreement with the summary figures which he received from Mr. Erickson?

Mr. Brody: I will move to strike that, your Honor. Mr. Marx did not so testify, and he did not want to express an opinion. It was Mr. Eppler.

Mr. Cox: I believe that Mr. Marx testified that, so far as his investigation went—I may be wrong——

Mr. Brody: (Interposing) As a matter of fact, Mr. Marx specifically stated that he believed we made investigations which would show that that was not the case, and he did not know about them.

(Testimony of Gerald E. Gorans.)

The Court: My recollection is that Mr. Eppler made that statement. I have no distinct recollection of Mr. Marx' testimony in that respect, and if you have the transcript, that will show it. If you haven't, the Court will let the matter rest with the Jury. If the Jury's [1874] recollection substantiates it, then the answer may be given, and the Jury is to determine whether or not Mr. Marx testified as indicated now by Mr. Cox.

Q. (By Mr. Cox): Do you remember the question, Mr. Gorans? A. No.

The Court: Mr. Reporter, will you read the question?

Mr. Keesling: If the Court please, is he going to read that again?

The Court: He is going to read the question.

Mr. Keesling: Not the statement of Mr. Cox.

Mr. Cox: Well, my statement was in the question.

Mr. Keesling: I object to him reading the statement.

The Court: Well, do you have the transcript?

Mr. Keesling: I don't have a transcript, but I don't think he should read it again.

The Court: It is up to the Jury to determine what the record is, and the reporter will read the question, and your objection may show.

(Whereupon, second preceding question was read by the reporter.)

A. I don't recall Mr. Marx testifying to that.

Q. (By Mr. Cox): Very well; you testified, didn't

(Testimony of Gerald E. Gorans.)

you, Mr. Gorans, that for December, 1947, Mr. Taylor's ledger account, Exhibit 272, shows a figure for cash receipts and for wholesale sales which were fourteen thousand dollars higher than the corresponding figures in Mrs. Wilcox's re-cap?

A. I believe that is correct.

Q. And you testified, didn't you, that this operated to increase income; didn't you?

A. That is correct.

Q. Now, some of the other differences, of course, that you have mentioned here, operated in and of themselves at least to reduce income, to understate income, in your testimony?

A. Not as far as 1947 is concerned.

Q. No, but I mean the various periods here, those which you have testified principally 1947, '8 and '9?

A. That is right.

Q. Now, since they go both ways, since some of these adjustments resulted in overstatement and some in understatement, doesn't it seem more likely that these differences are the result of attempts to adjust the accounts rather than approach to a scheme to avoid tax by either Alpine or Issaquah?

Mr. Moriarty: Object as a conclusion of the witness.

Mr. Cox: The witness is an expert.

The Court: Would the reporter read that question?

(Whereupon, the preceding question was read by the reporter.)

(Testimony of Gerald E. Gorans.)

Mr. Moriarty: The latter part of the question I object to.

The Court: I think the last portion, "rather than a scheme" might be stricken.

Mr. Cox: All right.

If I could ask the witness to answer:

Q. (By Mr. Cox): Whether or not the fact that these adjustments go both ways sometimes indicating—resulting in an understatement of income and sometimes resulting in an overstatement of income, if it doesn't appear that it, therefore, was the result of attempts at entering proper adjustments to the books?

A. Well, I get the general feeling from looking over all these things, that it was a matter of incompetency, so far as keeping the records are concerned. You don't make adjustments by picking round figures out of the air. You go back into the detail in support of the various things [1877] to determine what the figure should be, and then make a proper adjustment. Picking round figures and putting them in the books as adjustments can never be satisfactorily explained as trying to compensate for anything, because you don't know—he sees in one account something that doesn't look very good, so that you plug that and put a figure in there to try to correct the situation that exists there, and as a result, you have to adjust something else, but you don't know whether you are getting at the source of the problem or not.

Q. But, you testified you didn't find in your

(Testimony of Gerald E. Gorans.)

investigations all the work sheets and you also testified many of which you didn't understand the explanations for these adjustments?

A. No, on these work sheets usually all it showed was a figure.

Q. I believe you testified that Mr. Taylor's general ledger for Alpine as of December 31, 1948, was out of balance in the amount of \$21,568.97, is that correct? A. I believe that it was.

Q. Now, it is true, however, isn't it, that the balance sheet in Mr. Forster's tax return, Plaintiff's Exhibit 4, which reflects all of Mr. Taylor's year-end adjustments for that period, do balance?

A. I think the debits or the assets and liabilities and net worth agree.

Q. And you found two entries in that balance sheet and profit and loss statement totalling this figure of \$21,000? A. That is right.

Q. By which you testified the books were out of balance; then, this was simply a case of Mr. Taylor's failing to enter into his ledger all of the year-end adjustments he made on a work sheet and carried forward into the tax return; is that right?

A. That is right.

Q. Turning briefly to the Alpine Ice Cream Company, you testified, did you not, that the actual cash on hand on December 31, 1949, was \$1,978.75?

A. Yes.

Q. And here, again, you arrived at this by a comparison of the bank statement showing deposits in the succeeding month and a record of cash sales

(Testimony of Gerald E. Gorans.)

for Alpine Ice Cream Company which is in evidence as Defendants' Exhibit A-40?

Mr. Cox: May I have that?

(Whereupon, document was handed to Mr.

Cox by the Clerk.) [1879]

Q. (By Mr. Cox continuing): Do you recall the question? That is, you made a calculation based upon that document and bank statement?

A. That is right.

Q. Neither of which were kept, so far as you discovered, in Mr. Taylor's office?

A. That is correct.

Q. And you arrived through that means at a figure of some \$1900 which apparently was taken in in the concluding days of December and not deposited in the bank until sometime after the first of the year? A. That is correct.

Q. You testified that the tax return, Plaintiff's Exhibit 15, shows by subtraction of the combined figure cash and in bank cash on hand of \$182.11, as a result of a two thousand dollar adjustment to sales? A. That is correct.

Q. This was another case, was it not, where Mr. Taylor did not simply post his year-end adjustments in the ledger, but did carry them forward to the tax return?

A. He posted part of it to the general ledger.

Q. He posted the sales figures, but not the entry to cash?

A. It is customary to post all your entries to the general ledger. [1880]

(Testimony of Gerald E. Gorans.)

Q. This adjustment, like some of the others, served to increase income, and the tax on income, did it not? A. That is correct.

Q. Now, regarding the sales of Alpine Ice Cream Company, you testified that the statement for May, 1949——

Mr. Cox: May I have A-48, please, Mr. Bell?

(Whereupon, exhibit was handed to Mr. Cox by the Clerk.)

Q. (By Mr. Cox continuing): ——which is contained in Exhibit A-48, shows the sales of \$27,736.62.

I will get the exhibit for you.

(Whereupon, the exhibit was handed to the witness by Mr. Cox.)

Q. (By Mr. Cox continuing): You can find it better than I can. Do you find the figure \$27,000—some odd there to which you testified?

A. Yes.

Q. And you also testified that Mr. Taylor's ledger, which I have handed to you and which is in evidence as Exhibit 276, shows a figure of \$52,732.62 for the month of May, 1949?

A. That is correct. [1881]

Q. A difference of \$25,000? A. Yes.

Q. Now, isn't it true that it appears on the face of the ledger that the figure of \$27,000 was originally entered, but that this was later adjusted by writing "52" over it?

A. Well, the figure has been changed. The 52, something has been written over it.

(Testimony of Gerald E. Gorans.)

Q. Now, you testified, I believe, that this difference between the ledger figures for sales accumulated through the succeeding month and figures shown in the statements in A-48 are continued throughout the month of November, is that correct?

A. The statement shows continuously \$25,000 less than the general ledger.

Q. Yes. A. That is correct.

Q. In other words, this difference which arose in May was carried forward until the end of December, when an adjustment was made?

A. That is what appears to have taken place.

Q. Now, on cross-examination by Mr. Patten, you indicated, did you not, that you knew that this \$25,000 actually represented cash in the Alpine Ice Cream Company bank account in the Peoples National Bank which [1882] had been turned over to the corporation at the time of the change of name from Arctic Gardens to Alpine Ice Cream Company?

A. No, this \$25,000 was withdrawn from that account early in 1949, and placed in a special account along with other cash, and the cash in that bank was used for the construction—in that account was used for the construction of a building.

Q. That is, this Alpine Ice Cream building account referred to? A. That is right.

Q. And these funds were in that bank account when the change in name of the corporation Arctic Gardens was effected? A. That is correct.

Q. And in previously having been assets of

(Testimony of Gerald E. Gorans.)

Arctic Gardens, the funds were turned over to the corporation at or about that time?

A. That is right.

Q. And they represented then the proceeds of sales in some period prior to May 1st when the corporation undertook operation of the ice cream business?

A. Yes, they did.

Q. So, when Mr. Taylor set up the books and found this sum transferred from this bank account, he probably [1883] included it as income derived in some way from the ice cream operations prior to their being taken over by the corporation?

A. Well, he placed it into income. Whether properly or not, that would appear to be improper because the corporation had not made the sales. The sales that resulted in this \$25,000 in cash had been made prior to the transfer of the Alpine Ice Cream operation to the corporation.

Q. Isn't it true that this resulted from sales that were made in this kind of interim period when they were setting up the arrangements for having the ice cream business taken over by the new corporation and there was some question about what period they would start treating it as business of the corporation as distinguished from the former operation?

A. Well, that interim period started in 1944.

Q. I mean they actually had not started building an ice cream plant on Rainier Avenue and had not affected the change of name from Arctic Gardens until late 1948 or 1949?

(Testimony of Gerald E. Gorans.)

A. I think it was late 1948 that they started use of the plant down there.

Q. Did you find any evidence as to when legal steps were instituted to affect this change of name from [1884] Arctic Gardens?

A. I believe it was in May.

Q. It was in April or May, 1949?

A. I believe it was in May. It was not prior to May.

Q. Now, wouldn't it appear that the reason Mr. Taylor didn't put this \$25,000 figure, which is represented in his ledger as sales for May in the succeeding monthly statements, that he issued to Mr. Forster in the months through November because those statements were designed and did show the results of the actual operations with the new plant?

A. Well, I don't know if that is the reason for it. He put out some statements here during some of these months in which he shows as a liability \$25,000 and calls it Alpine profit.

Q. And there in fact is an account payable on the books in the amount of \$25,000, isn't there, during part of this period?

A. Well, there is an item here, Alpine Ice Cream Company, Hans Forster, \$25,000 and an explanation Alpine Ice Cream Company. I don't know what it is. But, on September 30th, he shows a balance sheet and includes in the liabilities an amount of \$25,000 and calls it Alpine profits. [1885]

Q. But, the sales figures that were carried throughout these resulting months on these state-

(Testimony of Gerald E. Gorans.)

ments were the sales figures of the operations begun when they started manufacturing ice cream in that new plant?

A. If I understand your question right, it is an operation of Alpine Ice Cream Company in which there were sales going back clear into 1944, sales every year.

Q. But not sales from this new building?

A. Oh, I don't know when the new building was completed, but I was under the impression it was not until May or June. It was not recorded on the books as building and equipment, I think, until October, 1949.

Q. But, they were actually set up on the ledger, were they not?

A. It shows up in September in the statement, and it shows up, equipment purchased, as of July 1, 1949.

Q. Purchased as of July 1st?

A. Yes, for \$25,000; building, elevator, refrigeration equipment, shown in the general ledger as July 1, 1949.

Q. I believe you testified regarding the notes payable of Alpine Ice Cream Company, December 31, 1949, and said that that item as it appears on Mr. Taylor's work sheets, A-48, included some sixty-six thousand dollar figure which was in a column headed Arctic Gardens? [1886]

A. That is right.

Q. Handing you what is in evidence as Plaintiff's Exhibit 275 and has been identified as the

(Testimony of Gerald E. Gorans.)

ledger of Arctic Gardens, and directing your attention to the last page, do you find there shown as Accounts Payable three figures which total the figure which appears on the work sheet?

A. Yes.

Q. Now, those being obligations of Arctic Gardens prior to the change of name to Alpine Ice Cream Company, continued to be obligations of Alpine Ice Cream, did they not?

A. That is correct.

Q. And, therefore, there is nothing improper in the reflection on the work sheet and in the final tax returns of accounts payable derived from the frozen food business previously conducted by Arctic Gardens?

A. No, there is nothing wrong with that.

Q. And, I believe you stated that the figure actually carried forward on to the tax return, Exhibit 15, was \$25,000 less than the total of the items that appear on the work sheet?

A. That is correct.

Q. So that here again there appears to be an adjustment of some sort which, if it resulted in any change of income, would have resulted in an increase of [1887] tax through a reduction of a liability account?

A. That is correct.

Q. Now, isn't it true, as I believe you indicated in answer to one of Mr. Patten's questions on cross-examination with regard to these discrepancies between figures in reports of Mrs. Wilcox and the general ledger, or differences between the general

(Testimony of Gerald E. Gorans.)

ledger figures for cash and the figures you have determined to be the actual cash on hand, resulted in many instances in—or took shape in subsidiary documents which were, so far as you know, never called to Mr. Taylor's attention?

A. I don't understand the first part of that.

Q. Well, I will try to restate it, then.

You have, for instance, in your calculations of cash on hand made reference to bank statements and to a record A-40 of cash receipts of Alpine Ice Cream Company which were kept in the offices at Issaquah or Rainier Avenue, and were not included in the reports that were either sent to Mr. Taylor or those which he referred to when he came out on his monthly business?

A. That is correct. This A-40 here was used because the summary reports prepared by Mrs. Wilcox and furnished to Mr. Taylor could not be located.

Q. I see; I believe you testified you could only [1888] find one month in that year?

A. That is right. We could only find the month of July, 1949.

Q. And the point I am getting at is that isn't it possible that many of the discrepancies which you found here and the adjustment for which you can find no explanation were made because of deficiencies or discrepancies existing in underlying records and books of these businesses which were maintained at Issaquah or at the Alpine office?

A. Well, one of the purposes in keeping the

(Testimony of Gerald E. Gorans.)

general ledger is to discover any discrepancies that might creep into the subsidiary records such as did.

Q. In other words, your testimony is that the discrepancies arose in the subsidiary records and carried forward into the ledger and not caught there?

A. On what discrepancies? I don't know whether you would say that they arose in the subsidiary records or arose through improperly interpreting the subsidiary records.

Q. But, they did have some foundation in records which were kept at these other offices and in some instances never passed on to Mr. Taylor except in summary forms through other means?

A. Well, so far as Alpine Dairy was concerned, I [1889] believe that the principal reason for much of this cash difference and adjustment to it was the result of these various items Mrs. Wilcox received and recorded which she didn't know what to do with them. She gave the summary information to Mr. Taylor and he never mentioned anything about it.

I think if you go back, in most all of those records, the reporting done by Mrs. Wilcox to Mr. Taylor did not change over a period of ten to fifteen years.

Q. They worked out this system of channeling information to Mr. Taylor and they continued to use it over an extended period of time?

A. I don't know who worked it out.

Q. I said "they"; I assume it was worked out

(Testimony of Gerald E. Gorans.)

between Mr. Taylor and Mrs. Wilcox, and I believe she so indicated in her testimony.

A. I believe she did say that.

Q. Now, in line with your answer, and you testified generally regarding your responsibility of the keeper of a general ledger for a business——

A. (Interposing) That is correct.

Q. Now, your testimony, in essence, on a good many of these items, is as follows, isn't it:

That things developed in the general ledger which Mr. Taylor should have checked, and so far as you [1890] could determine, did not?

A. Many things did.

Q. Now, you obviously were not a party to any discussions, I take it, during any of these years, as to precisely what Mr. Taylor's functions were to be in regard to the bookkeeping of this business?

A. Well, I would assume——

Q. (Interposing) I would like you to answer my questions. You were not there, were you?

A. No, I was not there.

Q. You don't know what the discussions were?

A. No, I don't know if there even were any.

Q. So that you don't know whether any limitations may have been placed on it or not?

A. Well, I would assume not, but I don't know.

Q. Well, again, I prefer you to answer, not what you assume, but what you know. Isn't it true that an accountant can undertake to perform any limited work for a person that the latter may employ him and pay him to do?

(Testimony of Gerald E. Gorans.)

A. Well, you are getting into an area there; they can undertake limited work.

Q. Isn't it true—sorry.

A. (Continuing) —but where they undertake responsibilities of keeping a general ledger, and the tax returns are prepared from that, then it behooves them to [1891] take some responsibility that when they come into things they absolutely know exist, and they show up in the general ledger, to inquire into them and find out why they exist.

Q. Does your firm perform an accounting service for business enterprises which involves the keeping of the general ledger and providing of monthly statements and preparation of income tax returns without the conduct of a full audit?

A. Only in one or two instances, is all.

Q. And what is your charge for that service for a concern doing a business, say, of two million dollars gross sales a year?

A. Well, we wouldn't even consider taking the general ledger on for a company that had that large a business, because you can't do it on a one-day-a-month basis, or half a day a month basis. It is a continual job.

Q. You would have required then, if you were to undertake any such responsibility, I would say, something more than fifty dollars a month to compensate your firm for services in connection with it?

A. Well, to do the job properly.

Q. You testified, I believe, to the compensation which you found the record to show had been paid

(Testimony of Gerald E. Gorans.)

to Mr. Taylor [1892] by Mr. Forster's various companies during this period?

A. That is correct.

Q. Isn't it true that over the entire period that this compensation would average under something a little over fifty dollars per month per company?

A. Approximately.

Q. Now, you testified regarding a check, Exhibit A-49 to the Mutual Life Insurance Company?

Mr. Cox: May I have that?

The Clerk: A-49?

Mr. Cox: Yes.

(Whereupon, document was handed to Mr. Cox, by the Clerk.)

Q. (By Mr. Cox continuing): In payment for premiums on the life insurance policy of Mr. Forster's life? A. That is correct.

Q. I believe you testified that Mr. Forster was reimbursed for that payment by a check drawn upon the Forster trust in the same amount?

A. That is correct.

Q. And you indicated that that payment had been deducted on the tax return for that year, Exhibit 16, and that that deduction was not, as a matter of law, proper? [1893]

A. As I understand the law, it is not proper.

Mr. Cox: May I have Exhibit 16?

(Whereupon, exhibit was handed to Mr. Cox by the Clerk.)

Q. (By Mr. Cox): Handing you Plaintiff's Exhibit 16, the tax return of the Trust for the year

(Testimony of Gerald E. Gorans.)

1946, isn't it true that the item — the deduction taken there is clearly labelled as being a deduction for an insurance payment?

A. It says insurance, but they also have depreciation on here, and anyone looking at it would assume that possibly insurance covers the building that the depreciation covers.

Q. So that it is an equivocal statement as to the nature of the payment?

A. You don't know what it is, because it is labelled "insurance". It doesn't say life insurance or fire insurance. It is merely "insurance."

Q. Now, in the succeeding year, as I understand it, you testified that the—on cross-examination, I believe, that the premium for 1946 was eventually paid by Alpine and charged to insurance expense on the books of Alpine?

A. In some years, it may have been paid by Issaquah Creamery Company, I am not sure but in some of those years it was charged to insurance expense. [1894]

Q. But, so far as you know, the payment for 1945 for which this check was drawn by the Trust and reimbursement was not claimed as a deduction by any of the other Forster enterprises?

A. The check drawn by the Trust, no.

Q. That is, they took a single deduction which apparently was not proper, but it was not duplicated by any other tax-paying entity?

A. No.

Q. While we are locating some exhibits, I be-

(Testimony of Gerald E. Gorans.)

lieve you testified that you have been working on your investigation and other phases of this matter since May 1, 1950, approximately?

A. That is correct.

Q. And compensation for your services for at least a portion of that period is included in the fee of \$70,000 which Mr. Tremper testified to, or someone has mentioned here?

A. That is correct.

Q. And you are being paid, or the firm of Touche, Niven, Bailey and Smart is being paid its customary rates for attendance at this trial, is that correct? A. I assume that they are.

Q. Are you—do you have any understanding as to compensation for yourself as an expert witness [1895] testifying in this case? A. No.

Mr. Cox: I would like to have these handed to the Jury, your Honor.

The Court: Is it a brief question, or will it serve any purpose in the next seven or eight minutes, or will it take longer?

Mr. Cox: It will take a little longer time, but not much. I would be perfectly happy to suspend now.

The Court: We might try to finish it up, if we can.

Mr. Cox: All right.

The Court: If it doesn't take too much longer.

(Whereupon, documents were handed to the Jurors.)

(Testimony of Gerald E. Gorans.)

The Court: Do you all have copies now? You might proceed.

A Juror: How many should we have?

Mr. Cox: One of 279 and one of 280. One is the mimeographed one and the other is the typed one.

Q. (By Mr. Cox): Directing your attention, first, to Plaintiff's Exhibit 279, the mimeographed sheet, entitled "Hans Forster Computation of Items of Unreported Income", and you [1896] were in court and heard the testimony of Mr. Holtberg in regard to this exhibit and computations with regard to it? A. Yes.

Q. And is it your understanding that this sets forth, based on the testimony and exhibits in this case, the items of income which the Government asserts were income to Mr. Forster in these years and not reported on his returns?

Mr. Keesling: Your Honor, I didn't get the first part of the question.

The Court: Mr. Reporter, will you read the question?

(Whereupon, preceding question was read by the reporter.)

Mr. Keesling: If the Court please, I object to the form of the question.

The Court: In what respect?

Mr. Keesling: What his understanding was.

The Court: Well, he may state if that is not his understanding of the exhibit.

Mr. Cox: It is preliminary, your Honor.

(Testimony of Gerald E. Gorans.)

The Court: Objection overruled.

A. Well, that is what I understand it to be.

Q. (By Mr. Cox): Now, referring first to the first page of the exhibit covering the year 1945 and ignoring the items of interest and dividend from various individual loans and some stocks which Mr. Forster held, and directing your attention to the portion headed Issaquah Creamery Company and a small heading "A", the first item there is checks payable to Issaquah Creamery Company, Incorporated, deposited to Washington State Bank, savings account 198, \$1,698.65. Is that correct?

A. That is what it says.

Q. Now, in your testimony, you have not testified to any deficiency in the records which affected the reporting or failure to report that item, have you?

A. Well, as I understand your question, I have pretty well stated the records as a whole are inadequate and as a whole being inadequate would take into account some of these items shown here.

Q. You didn't testify, however, did you, at any point in the books at which you found a difference between figures reported to Mr. Taylor by Mr. Erickson or by Mrs. Wilcox and figures he entered in his ledger which involved any of the checks entering into that figure, did you? A. No.

Q. The next item is checks of Issaquah Creamery used to pay personal expenses of Hans Forster and then there [1898] are listed a number of items totalling \$15,067.90; is that correct?

(Testimony of Gerald E. Gorans.)

A. That is the total——

Q. (Interposing): That is for the whole?

A. (Continuing): ——for all interest and dividends.

Q. And disregarding that possible total, there are a number of items listed beginning with Ed's Kennels and running through Northwest Mutual Insurance Company?

A. That is correct.

Q. And your testimony as to the difference between Mr. Taylor's ledger and the figures supplied by Mrs. Wilcox or Mr. Erickson do not relate to any of those items, does it? A. No.

Q. The next item is Finstad and Utgard and a figure \$3600.00. You did not testify to any deficiency, did you, in the books of Finstad and Utgard relating to the entry of \$3600 in payment for stock of Mrs. Finstad, did you?

A. Well, so far as Finstad and Utgard is concerned in this payment, all of them, there would not be any problem so far as their tax was concerned. It is either a dividend to Mr. Forster or it is salary to Mr. Egeness, and——

Q. (Interposing): And they—go ahead, I am sorry. [1899]

A. (Continuing): ——it would affect Finstad and Utgard if considered a dividend in that dividends cannot be deducted in arriving at the taxable income of a corporation.

Q. My question is that in your testimony, in chief, under an examination by Mr. Brody, you

(Testimony of Gerald E. Gorans.)

didn't testify to any deficiencies in the records affecting that item? A. No, I did not.

Q. Now, dropping down to the check labelled "D", business income, it says certain checks of Alpine later used to pay certain personal expenses of Hans Forster and claimed as business expenses. You didn't testify to any differences in the figures furnished to Mr. Taylor and those entered in his ledger involving any of those items, did you?

A. Not of these particular checks issued to some individual or company for personal expense.

Q. And the next item is Alpine Dairy Customer Discount checks deposited to Hans Forster personal savings account No. 198; you didn't testify to any deficiency in the record maintained by Mr. Taylor and any variance between those and the figures furnished him by Mrs. Wilcox involving those items, did you? A. No. [1900]

Q. All right; turning to the second page, covering 1946, and leaving out under Issaquah Creamery Company the first two items, which are similar to those on the preceding page, the next item "C", is cash discounts of Issaquah Creamery paid to Hans Forster personally by Time Oil Company. You didn't testify as to any deficiencies in the books of either Alpine or Issaquah involving those payments, did you?

A. I think I testified as to the general inequities of the records. I didn't in particular point out this particular item, no.

Q. You didn't point to any condition involving

(Testimony of Gerald E. Gorans.)

these payments where Mr. Taylor recorded in his ledger a figure different than that given to him by Mrs. Wilcox or Mr. Erickson?

A. So far as Time Oil rebates, no.

Mr. Keesling: I object to the question. These are cash discounts. There is nothing in the evidence that Mr. Erickson had anything to do with cash discounts. If you are speaking of a check—if it is a cash item, there is nothing in the record.

Mr. Cox: I stated my question to be all inclusive, including the two people who—in connection with these businesses—were furnishing these figures to Mr. Taylor. I didn't intend to create any reflection as [1901] to any item, as to responsibility or knowledge for the figures.

The Court: I believe I have stated to the Jury before that any question put by counsel so far as it may purport to indicate what testimony was, of course, is not testimony, and is not to be regarded by the Jury at any time as evidence.

Mr. Cox: My question, of course, was as to this witness's testimony about this item.

The Court: Yes; but the objection was to the question.

Mr. Keesling: Yes.

The Court: You may proceed.

Mr. Cox: It is time to suspend.

The Court: All right. You are obviously not through.

Mr. Cox: No.

The Court: So that we will collect the exhibits

(Testimony of Gerald E. Gorans.)

and Mr. Bailiff, if you will collect these exhibits from the Jury, please, and we can check them in after our noon recess. You can just pick them up and give them back to the jury when we reconvene.

Ladies and Gentlemen of the Jury:

We will now recess for lunch. The Court calls your attention to the admonition given on similar [1902] occasions and asks that you heed it at this time. You may now be excused until 1:45.

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, at 12:18 o'clock p.m. a recess was had in the within-entitled and numbered cause until 1:45 o'clock p.m. March 23, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated. It is stipulated that the Jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Cox.

Mr. Cox: May we have copies of the exhibits distributed?

(Whereupon, exhibits were distributed to the Jury.)

Q. (By Mr. Cox): Now, continuing where we

(Testimony of Gerald E. Gorans.)

were at the time when we suspended for lunch in 1946, in exhibit 279, the [1903] mimeographed copy of the computation of Mr. Holtberg, the next item is that of Item "D", checks of Issaquah Creamery used to pay for construction of having a barn on farm.

Your testimony has not related to any entries made in the books with regard to that item, Mr. Gorans?

A. No. I haven't testified on these particular items. There has been quite a bit of testimony about them already and my feeling is that the reason they were in here was just the basic lack of adequate records right from the very beginning.

Q. But you haven't testified to any alleged deficiency in the bookkeeping system at Issaquah which explains any of these items of personal expenditure that were charged to business expense?

A. Well, I think that they got into it because of the lack of any reviewing of the work being done by Mr. Erickson by the person who was using that information.

Q. But——

A. (Continuing): And if Mr. Erickson goes ahead and makes entries one month and the next month and is never told they are wrong, there is no particular reason for him to assume he could not continue what he has been doing. [1904]

Q. But your testimony on direct, Mr. Gorans, was as to differences in figures between Mr. Taylor's ledger and Mrs. Wilcox's figures as to whole-

(Testimony of Gerald E. Gorans.)

sale sales, or accounts receivable, or cash, and things of that sort; you didn't testify, did you, about the handling on the books of items of expense deducted as business expenses which were actually expended for Mr. Forster's personal purposes?

A. No, I did not.

Q. And the same thing would be true then of item "E", the check of Issaquah Creamery dated September 1, 1946, charged to expenses, used to purchase capital stock of Apex Farms of Hans Forster?

A. I am not satisfied that that was not refunded. I don't know whether it should be in there or not.

Q. So far as your testimony on direct is concerned, you didn't testify to the method in which that transaction was handled on the books?

A. No, I did not.

Q. And on the second page for 1946, there are some items of a sort not previously encountered in the preceding year. There is a reference to item "D", at the top of the page, of Alpine Dairy, check to Northwest Basketball tournament, deposited under 198. You didn't testify to the bookkeeping handling of that item, did you? [1905]

A. Not to this specific item, no.

Q. Nor as to items "E" and "F", is that correct?

A. No, not specifically to each one.

Q. Now, in addition to these income items which were not put on the books, and to these expenses which were deducted as business expenses, Exhibit

(Testimony of Gerald E. Gorans.)

279, there, includes certain items which Mr. Holtberg included in his computation in the nature of salary, interest, dividends and farm income, doesn't it? A. Yes.

Q. And those are items the receipt of which by Mr. Forster would not be within the scope of the books and records kept for Alpine Dairy or the Issaquah Creamery Company; is that correct?

A. No, but they would come in under the other books which Mr. Taylor kept.

Q. Well, these are items of personal loans to Mr. Forster as an individual, and not in his capacity as carrying on Alpine Dairy, are they not?

A. That is correct.

Q. So, without going through the remaining years covered by Exhibit 279, isn't it fair to say that your testimony as to the manner in which Mr. Taylor kept his general ledger had nothing to do with any of these items of unreported income which Mr. Holtberg has included in his [1906] computation here?

A. Well, only to the extent that the records were not adequate and not being adequate and properly supervised would result in these particular items being incorrectly recorded.

Q. Mr. Gorans, again getting back to the scope of your testimony on direct, you testified to certain particular instances in which you stated that Mr. Taylor's figures in his ledger did not agree with the figures you found elsewhere in the subsidiary records of these businesses, and in no instance was

(Testimony of Gerald E. Gorans.)

it a difference or discrepancy with regard to income that was never reported on the books or with regard to personal expense of Mr. Forster that were charged as business expenses?

A. Not those particular items, those differences that I testified to, but I also testified as to the general condition of all the records which would take into consideration these particular things.

Q. But, the specific testimony as to the manner in which the general ledgers were kept related to a specific list of transactions or specific points in them about which you testified, none of which were concerned with the items of unreported income set out in Exhibit 279?

A. The specific points I brought up in the testimony [1907] were not on here, referring to Alpine Dairy and Issaquah Creamery Company.

Q. All right; now, turning briefly to Plaintiff's Exhibit, No. 280, which is the typewritten copy of Mr. Holtberg's final computation, headed Issaquah Creamery Company, Incorporated, computation of net income. On the first page, for 1946, the first additional item, that of additional sales, checks payable to Issaquah Creamery Company not recorded in the books of the corporation and deposited to Hans Forster's personal savings account, in an amount of over \$14,000, in your testimony about specific differences in Mr. Taylor's ledger, you didn't testify to any of the transactions included in that figure, did you?

A. No, not as to a specific difference between

(Testimony of Gerald E. Gorans.)

the figures someone gave him and he put in the ledger; they didn't relate to these particular items.

Q. And the same is true of the next category, checks of Issaquah Creamery Company, Incorporated, charged as corporate expense and used to pay personal expenses of Hans Forster. You did not, in your testimony as to specific alleged deficiencies in the books have reference to any transactions involving those items, did you?

A. Not in the differences that I commented on.

Q. And the same thing is true of the next item, checks of Issaquah Creamery Company, incorporated, charged to corporate expenses and used to pay construction cost of a barn on Hans Forster's farm; that is true?

A. No, I didn't testify as to the construction of the barn or the cost of the barn.

Q. And subject to your reservation as to the exact nature of this check for the Apex stock, you didn't testify about that, either? You already testified about that in connection with the preceding computation; isn't that true?

A. That is correct.

Q. Isn't the same true of the items of unreported income shown there in Mr. Holtberg's computation for 1947 and 1948? They are items about which you have not testified in your direct examination?

A. That is correct.

Q. And when we turn to the last page of the exhibit, or next to the last page, 1949, there is reflected items—three or four or five, down towards

(Testimony of Gerald E. Gorans.)

the bottom of the page—are the items of adjustment to milk drafts and to accounts payable on the books of Issaquah at the end of 1949 about which you did testify both on direct and on cross—isn't that true? A. Yes. [1909]

Q. And you testified that there was no reconciliation with regard to the accounts payable and milk draft items reflected there?

A. That is correct.

Q. But again, aside from those three items in 1949, isn't it true that your testimony as to Mr. Taylor's ledger and the way in which he kept them, has no connection with any of these items of unreported income which the Government asserts were received by Issaquah Creamery?

A. It definitely had effect on the way they were kept because it gets into the general ledger and the basic records in back of it.

Q. My question was—excuse me.

A. (Continuing): On the basis of your question, they did have an effect on the general ledger and the way the general ledger was kept.

Q. That is, some difference which arose between Mrs. Wilcox's figure for wholesale sales for Alpine Dairy and the figures that went into Mr. Taylor's ledger had something to do with these figures?

A. That particular item would not, but you covered a broad statement on the fact that these particular items on here would have no effect on the general ledger and the way the records were kept and I maintain that they did. [1910]

(Testimony of Gerald E. Gorans.)

Q. My question was whether or not your testimony as to the way in which Mr. Taylor kept his general ledger had anything to do with the specific items of unreported income that the Government has asserted were received, and they have set out in that exhibit?

A. I didn't testify as to each such item on here.

Q. Or to any of the items on there, except for the three adjustments at the end of 1949 for Issaquah?

A. Well, my testimony covered all the accounting records and the way they were kept which would affect these particular items, because they were recorded in the accounting records.

Q. But you didn't testify, did you, Mr. Gorans, as to any entry made in any of the books with respect to any of these items?

A. I didn't testify that Mr. Taylor took one of these figures and put it in the general ledger; no, I did not.

Q. Well, would the manner in which the general ledger was kept by Mr. Taylor have anything to do at all with failure to enter income of the business in the books at all? [1911]

A. Well, if you mean just transcribing figures from one place and putting them in the general ledger without going in back of those figures or getting into the system at all and talking merely about picking up a figure from one place and putting it into another place without giving any

(Testimony of Gerald E. Gorans.)

thought or anything else to the figure you were using, no, it would not have any effect.

Q. Now, it is perfectly clear to you, isn't it, Mr. Gorans, that there was in the books of both Alpine and Issaquah a place where all of those checks representing sales could have been properly entered?

A. With proper supervision, they probably would have been entered.

Q. Well, it is true that a great many of the sales made did get properly entered, isn't that true?

A. Many of them did, yes.

Q. And if these items had been properly entered, presumably they would have gotten on to the general ledger as to the sales that were in fact put into the books?

A. They probably would have been put on the general ledger.

Q. Well, in summary, Mr. Gorans, isn't it true that all of your testimony with relation to the manner in which the books were kept has nothing to do with the items of proof relied upon by the Government in their [1912] case and set out in Exhibit 279 and 280?

A. Well, you mean then I would get up here and try to refute the figures that the Government has used?

Q. No.

A. Many of the figures were furnished to them.

Q. If you don't understand my question, Mr. Gorans, I will have the reporter read it back to you.

(Testimony of Gerald E. Gorans.)

The Court: Do you understand the question, Mr. Gorans?

The Witness: No.

The Court: Mr. Reporter, will you read the question?

(Whereupon, the following question was read by the reporter: "Well, in summary, Mr. Gorans, isn't it true that all of your testimony with relation to the manner in which the books were kept has nothing to do with the items of proof relied upon by the Government in their case and set out in Exhibit 279 and 280?")

A. Well, only to the extent that the records as kept and the things that have been pointed out would indicate that the — there wouldn't be any basis to rely on the records for the preparation of the income tax returns. [1913]

Mr. Cox: That is all.

Mr. Brody: May it please the Court, we have a witness whose testimony will be brief, who has come up from California. We have expected Mr. Gorans' testimony would be concluded today so that this witness could appear, and he has made plans to return to California and we have asked permission to put him on at this time, so that he can return according to schedule.

The Court: Any objection?

Mr. Keesling: No objection.

The Court: Does the Government have any objection?

Mr. Patten: No objection.

(Testimony of Gerald E. Gorans.)

The Court: Do you want to interrupt this witness? Have you any objection?

Mr. Le Sourd: None.

The Court: You may step down, Mr. Gorans.

(Whereupon, the witness was excused.)

* * * * * [1914]

GERALD E. GORANS

upon being recalled as a witness for and on behalf of the defendant Forster, and having been previously duly sworn, testified as follows:

Cross Examination

Q. (By Mr. Keesling): Mr. Gorans, this morning Mr. Patten asked you a question referring to the work of your firm for a period of about four years on the accounting matters in this case, and the amount expended and concerning the same, and then he asked you for, I believe, your exact calculation of taxes unpaid.

Q. Did you ever make an exact calculation of taxes unpaid for the Indictment period years?

A. No.

Q. And why not?

A. Well, basically, any calculation that we would make would be purely an estimate because there is some information that the Government has, and various things they have which we have, and we do not agree on how it should be handled for tax purposes and as a result of that, any computation that I might make, or anyone else might make, indepen-

(Testimony of Gerald E. Gorans.)

dently of the Government would have no—would be of no use to anyone. The settlement of this civil liability is going to be a very complicated thing, because there are areas [1958] in which they claim that there are constructive dividends, and there is a question as to whether they are or not. I think in my mind, and probably in minds of other people, that it is not something that is subject to a precise determination or something you could sit down and work out.

Q. As a matter of fact, you mentioned constructive dividends. Now, in that particular instance, it is true, is it not, that you and perhaps some of the experts of your firm disagree with some of the experts for the Government?

A. I think that is true.

Q. That there are a number of similar situations in this tax picture that the—on which the experts disagree among themselves; is that not true?

A. Well, considering everybody involved in this an expert, yes.

Q. Do you recall the figure—the difference between the amount the Government claims was due under the Indictment and the amount they finally arrived at, and I think their exhibit 278—

Mr. Cox (Interposing): 279.

Mr. Patten: 278.

A. I think it was somewhere around fifty or sixty thousand dollars. [1959]

Q. (By Mr. Keesling): There were differences in those two of some sixty thousand dollars between

(Testimony of Gerald E. Gorans.)

the time this case started and the figure they came up with on the trial? A. That is right.

Q. In your testimony, you related the amount paid to Mr. Taylor during the Indictment years; do you have those figures before you?

A. Yes.

Q. Do you also have the figures as part of the over-all figure that you gave this morning of the amount paid to Mr. Erickson for salary during the Indictment period? A. Yes.

Q. In the Indictment period, starting with the year 1945, is it correct that Mr. Taylor was paid a total in that year for all these enterprises, \$3,650.00?

Mr. Cox: Objected to as repetition.

The Court: Is this Taylor; did you say "Taylor"?

Q. (By Mr. Keesling continuing): Mr. Taylor was paid \$3,650.00? A. Yes, that is true.

Q. And in that same year——

Mr. Cox (Interposing): On my objection, the witness already testified to this. [1960]

Mr. Keesling: This is a matter of comparison.

The Court: He testified in examination by other counsel, is that what you are referring to?

Mr. Cox: Yes.

The Court: I don't believe, while examination was by counsel for another defendant, I don't think that we can consider that as part of the direct examination. Therefore, I think he is entitled to some leeway. Objection overruled.

Q. (By Mr. Keesling): The figure paid Mr.

(Testimony of Gerald E. Gorans.)

Taylor—the amount paid Mr. Taylor—during 1945, was the total amount of \$3,650?

A. That is correct.

Q. And what amount was paid Mr. Erickson during 1945? A. \$2,700.

Q. \$2,700? A. Yes.

Q. That would be \$225 a month?

A. That is correct.

Q. Approximately eight or nine hundred dollars less than that received by Mr. Taylor?

A. It was \$950 less.

Q. In 1946, the figure paid Mr. Taylor, was it [1961] \$5,081.94? A. That is correct.

Q. And was the figure paid Mr. Erickson less than that amount? A. Yes, it was.

Q. \$4,075.00? A. Yes, \$4,075.

Q. That would be approximately \$75 less Mr. Erickson received in that same year?

A. It would be \$1,006.94.

Q. In 1947, Mr. Taylor was paid \$5,552.07 and in that year, Mr. Erickson received how much?

A. \$4,612.50.

Q. And in that year, he also received less?

A. Yes.

Q. In 19—excuse me—in 1948, Mr. Taylor was paid \$4,901.82, and what was Mr. Erickson paid?

A. He was paid \$4,800.

Q. That would be about \$100 less, approximately? A. Yes.

Q. And then in 1949 Mr. Taylor received a total amount of \$5,500.87; what did Mr. Erickson re-

(Testimony of Gerald E. Gorans.)

ceive? A. Mr. Erickson received \$5,400.

Q. About \$100 less than Mr. Taylor received; and the scale dividing these into monthly periods ranged from [1962] \$225 a month in 1945 to a top figure of \$450 a month in 1949?

A. That is correct.

Mr. Griffin: For Erickson.

Q. (By Mr. Keesling): That is for Mr. Erickson? A. Yes.

Q. And during all of that period, Mr. *Erickson* received a greater amount than did Mr. Erickson?

A. Yes, he did.

Q. Now, in respect to your testimony as to the general ledger, is it correct that the general ledger is in essence the control book of all the subsidiary books? A. That is correct.

Q. That is the book with the black cover and it was that book concerning all these various enterprises that was kept by Mr. Taylor?

A. Yes.

Q. As differentiated from Mr. Erickson or Mr. Wilcox or Mrs. Simonson or Mr. Schneider?

A. Yes.

Q. He always kept the general ledger controls? Now, you stated that the necessary fundamental in keeping a set of books was the reconciliation, is that correct? [1963]

A. The reconciliation of the accounts where there are detailed items in support of that balancing the accounts.

Q. Briefly, what is a reconciliation?

(Testimony of Gerald E. Gorans.)

A. A reconciliation consists of—well, take, for instance, cash on hand: after recording the summary information in the general ledger, you end up with a balance, as a rule. In reconciling the balance in the general ledger with the actual cash on hand, it is merely a matter of developing the actual cash on hand as of the same date you have the balance in the general ledger, and comparing the two.

It can consist of either a cash account; in this instance, it consisted of deposits prepared by and received by the bank until subsequent to the end of the month.

Q. Would it have been possible for Mr. Erickson in Issaquah to make a reconciliation of cash on hand with the books at Issaquah?

A. He could have reconciled the cash on hand as a physical count with the amount shown in the records they had, but he could not reconcile it with the general ledger because that was not in his possession.

Q. He would have to have the general ledger to reconcile it with the figures in the general ledger?

A. That is correct. [1964]

Q. And is the same true as to a reconciliation of accounts receivable?

A. He would have to have the general ledger figure in order to reconcile the accounts receivable to that.

Q. And would he have to have the general ledger kept by Mr. Taylor to reconcile the accounts payable?

(Testimony of Gerald E. Gorans.)

A. To reconcile the general ledger balance, yes.

Q. And in order to make a reconciliation in what is termed a set of books, it is necessary that the general ledger be a part of that reconciliation, is it not?

A. Well, the reconciliation doesn't necessarily have to be a part of the books, but it is a means of determining whether or not the information in the books is correct.

Q. Maybe I didn't ask the question correctly. By that, I mean that to make a reconciliation as to a set of books, either to cash on hand, cash in bank, accounts receivable and accounts payable, it is necessary to have the general ledger, the information in the general ledger?

A. That is correct; you have got to have the information that is in the general ledger.

Q. And in all these enterprises, that general ledger was kept by and was in the possession of Mr. Taylor?

A. That is my understanding. [1965]

Q. So far as your examination of the records is concerned, you stated that besides the fact there had been no reconciliation by Mr. Taylor, I believe you stated that the ledger was incomplete. Can you just elaborate a little bit what you meant by that? In what respect the ledger was incomplete.

A. Well, posting references was not included, and in some instances, the dates were not included, and there was no explanation as to the item appearing in the general ledger. There is just an

(Testimony of Gerald E. Gorans.)

amount there, but no explanation as to what the amount consists of.

Q. Going on to these items Mr. Cox asked you about in relation to what appeared on the records of Mrs. Wilcox as compared to the figures entered in the general ledger by Mr. Taylor, and also those entered in his work sheets and statements prepared by him, you testified, did you not, that in October of 1949 as to the cash on hand at Alpine Dairy that there was a difference of more than thirty thousand dollars between the figures furnished by Mrs. Wilcox and those appearing in the general ledger kept by Mr. Taylor?

A. That is October 31st.

Q. That figure was in excess of thirty thousand dollars? A. Yes, it was. [1966]

Q. Now, Mr. Cox in his cross examination at some length questioned you as to various items which might offset other items in the general ledger. Am I correct that if the subsidiary records, or the summary figures, and I think each counsel asked you about the records furnished Mr. Taylor, and the records and figures he used, is it not correct that the figure furnished, that very figure is the figure that must be entered in the general ledger to properly keep books?

A. Well, you had either the figure that is shown in the subsidiary records that should be entered in the general ledger if it actually occurs there, and if there is adjustment necessary, the adjustment should be entered in the general ledger, subsequent

(Testimony of Gerald E. Gorans.)

to recording the amounts from the subsidiary records, or else the figures in the subsidiary records should be changed, and the explanations noted in there as to why the change is made prior to the time of posting those figures to the general ledger.

Q. In other words, on this October, 1949 figure, the difference between Mrs. Wilcox's—the figure she furnished—and the figure in the general ledger was over thirty thousand dollars——

Mr. Cox (Interposing): I will object to the question. I think the witness's original question was not the [1967] difference between the general ledger and the figure furnished by Mrs. Wilcox, but the figure he developed as the cash on hand through use of the bank statement. I think counsel is——

Mr. Keesling: Well, I will clarify that.

Q. (By Mr. Keesling continuing): As to the figure of cash on hand, was that a difference between the figure Mrs. Wilcox furnished and the figure in the general ledger or was it a difference that came about by reconciliation on your own investigation?

A. Well, the difference of cash on hand after entering the figures in the general ledger there is one figure that appears. As a result of these—entering these summary figures furnished by Mrs. Wilcox. But, then, on this information furnished by Mrs. Wilcox, there shows the amount of the deposit for each day, and by determining which of those deposits was not recorded in the bank until subsequent to October 31 in this instance, you can deter-

(Testimony of Gerald E. Gorans.)

mine the actual cash they had on hand as of October 31st.

Q. But it is correct to say that as between the figures furnished by Mrs. Wilcox, according to the records in evidence, and that appearing in the general ledger, there was this difference of more than thirty thousand dollars?

A. Well, the figure thirty thousand does not show [1968] up as a single item in Mrs. Wilcox's summary but it——

Q. (Interposing): The total of her figures as compared to the single figure entered in the ledger, or as compared with the figures entered in the ledger?

A. She doesn't show a total figure for cash on hand at any particular time. She has her deposits for each day, and Mrs. Wilcox did not attempt to determine which deposit had been recorded by the bank and which ones not.

Q. And when that mathematical computation had been made, it showed this difference?

A. That is right.

Q. I believe also in October, 1949, you stated there was a minus cash figure of over \$21,000, is that right?

A. That appears in the general ledger.

Q. And that—that is physically—well, it is just impossible from the standpoint of bookkeeping, is that right?

A. Well, it is an impossible situation to develop. The way the books were kept, the negative cash

(Testimony of Gerald E. Gorans.)

shows up in the general ledger, but it is a physical impossibility for the company to have a negative cash figure, and when something like this shows up in the general ledger, it is usually a very good indication that there is something wrong [1969] with the information in the general ledger.

Q. That was in October, 1949. Going on to November, 1949, your testimony, as I recall, was that there again as between your mathematical computation of Mrs. Wilcox's figure as furnished to Mr. Taylor and the difference between that and the figure appearing in Mr. Taylor's ledger was again more than thirty thousand dollars?

A. That is correct.

Q. And there, again, in November, 1949, there is a minus cash balance and this minus figure was in excess of sixteen thousand?

A. That is correct.

Q. Going on to the next month of December, 1949, that is the last month in the Indictment period; the difference of your mathematical computation and Mrs. Wilcox's figures and those appearing in the general ledger kept by Mr. Taylor—and that is December, 1949—was in excess of \$25,000? The previous two months in excess of thirty and this twenty-five thousand? A. \$25,330.

Q. As I understand your testimony now, it is that the figure submitted by Mrs. Wilcox or Mr. Erickson or someone else, the proper method of handling those, regardless of the figure submitted, is that that figure should be carried over exactly

(Testimony of Gerald E. Gorans.)

as it appears from the [1970] subsidiary records to the general ledger record and then if there are adjustments to be made, they should be made after that exact figure has been entered?

A. Either that way, or the figures——

Q. (Interposing): Well, if the adjustment has been made on the subsidiary record, then there would be a final figure, and that figure would be carried over? A. That is correct.

Q. The figure would show on either the subsidiary records or the general ledger?

A. That is correct.

Q. And then there would be additional information to show on these adjustments that Mr. Cox was making reference to?

A. That is correct.

Q. But in these particular instances, as it came out, of the figures furnished, it was changed before it got to the general ledger; that is, the figure was different with no explanation in either the general ledger or the subsidiary record?

A. That is correct.

Q. Now, leaving the reduction of the cash on hand, these reductions of thirty thousand for two months and the twenty-five thousand for the third month, and going into the accounts receivable records Mr. Cox mentioned for Alpine [1971] Dairy for December, 1949, it is my understanding that you said that the figure there as furnished by Mrs. Wilcox as compared with the figure appearing in

(Testimony of Gerald E. Gorans.)

the general ledger was reduced by more than ten thousand dollars——

A. (Interposing) Well——

Q. (Continuing) ——for the accounts receivable figure for December, 1949?

A. It was reduced by twelve thousand dollars.

Q. Was it twelve thousand? I used the lower figure. That was the same month that the cash on hand was reduced twenty-five thousand?

A. No, the cumulative result of recording cash receipts resulted in an understatement of cash on hand but the cash on hand didn't develop independently in the month of December, 1949.

Q. Well, now, going back to October, 1949, for a moment as to the comparison of the accounts receivable as furnished in that month by Mrs. Wilcox and the figure appearing in the general ledger, as I understand your testimony in that month the accounts receivable showed a difference as they were taken between the subsidiary books and the general ledger of more than \$21,000 less than the figure furnished; that is, the general ledger was \$21,000 more than that figure—less than the figure shown [1972] by Mrs. Wilcox on her accounts receivable?

The Court: Just a moment, Mr. Keesling. I am going to interrupt. Do I understand that this matter has some particular relationship to Mr. Erickson?

Mr. Keesling: Yes. If I can go on, I will cover it a little faster, to save time.

The Witness: I don't understand that last question.

(Testimony of Gerald E. Gorans.)

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

Q. (By Mr. Keesling continuing): As to the accounts furnished by Mrs. Wilcox in the accounts receivable, for October, 1949 of Alpine.

Mr. Brody: Will you raise your voice, Mr. Keesling?

Q. (By Mr. Keesling, continuing): The figure furnished by Mrs. Wilcox for accounts receivable in October, 1949, when it appeared on the general ledger, was \$21,000 less than the Wilcox figure?

A. In October, 1949?

Q. Is that correct? I may have it.

A. I don't believe I covered anything on October, [1973] 1949, so far as accounts receivable are concerned.

Q. December? A. December, 1949?

Q. Well, I will go on to the next question.

A. Well, there was a difference in December, 1949, between the figures that—furnished on Mrs. Wilcox's summary and the amount recorded in the general ledger of \$12,000 of accounts receivable.

Q. Now, in that same month of December, 1949, the accounts payable figure in the general ledger was in excess of fifteen thousand dollars, **which** showed up on the reconciliation, isn't that correct? That is, the figure in the general ledger was actually in excess of fifteen thousand dollars of the actual accounts payable for December, 1949?

A. Well, the balance in the general ledger was

(Testimony of Gerald E. Gorans.)

fifteen thousand five hundred dollars in excess of the actual liabilities as they were shown in the various records at December 31, 1949.

Q. Now, going into the—these even amounts that you testified to this morning concerning the figures that appeared in the ledger as compared—that is, for wholesale sales as compared with Mrs. Wilcox's summary for December, 1949, I believe you told Mr. Cox there was an even seven thousand dollars less? [1974]

A. The wholesale sales? Yes, seven thousand dollars less.

Q. And then the accounts receivable figure in the ledger was an even twelve thousand dollars greater than Mrs. Wilcox's record shows?

A. The amount recorded on collections was \$12,000 greater than the amount appearing in Mrs. Wilcox's record.

Q. And then, in that same month, Mr. Taylor's figure in the general ledger for cash receipts was an even five thousand dollars more than the figure as shown on Mrs. Wilcox's records? A. Yes.

Q. But, because one of those transactions was greater and one was less, the outcome would be that the understatement of income for that particular December, 1949, would be in the sum of seven thousand dollars?

A. Well, the effect on income would be the amount that the sales were understated, which was seven thousand dollars.

Q. Now, in these various transactions where

(Testimony of Gerald E. Gorans.)

they were taken from the subsidiary records to the general ledger, they did not always result in the understatement of income, did they?

A. No.

Q. And some of the errors were in favor of the [1975] Government, isn't that correct, so far as tax standpoint is concerned?

A. Well, the way they were recorded would be in favor of the Government.

Q. For instance, in the year end 1949, for December—in the year ending 1947, for December—the general ledger showed actually \$14,000 more cash receipts than the figure furnished by Mrs. Wilcox?

A. That is correct.

Q. In other words, that would be an example of an overstatement where there would be more tax payable?

A. Well, in connection with overstatement of cash, wholesale sales were overstated at the same time.

Q. And then, in addition that wholesale sales was overstated by another fourteen thousand dollars, is that correct?

A. Well, there is a—the amount appearing in the tax return for the ending 1947 is \$13,000 more than the amount appearing in the general ledger.

Q. That is for wholesale sales?

A. For sales.

Q. Is the net effect of that actually to overstate income by fourteen thousand dollars?

A. Well, the net effect of these two differences

(Testimony of Gerald E. Gorans.)

that develop—there are two independent differences—the [1976] one on the—where the cash was increased and the sales were increased and then there was another one where the figures were increased when they were placed in the tax return. The total of those two changes resulted in the increasing sales for the year by \$27,000.

Q. That again would be an example of an error which would be in favor of the Government, tax-wise, would it not?

A. At the time, it would appear to be in favor of the Government.

Q. That is, I mean taking that isolated transaction? A. That one transaction, yes.

Q. Of course, if they were all in favor, we wouldn't even be here, but some of them balance out but those particular transactions were in favor.

Now, you mentioned—well, that would be a total error in favor of the Government on that one of \$27,000, is that correct? A. That is right.

Q. Now, did this same type of discrepancy—the difference between the furnished figures and as they appeared in the general ledger, sometimes greater and sometimes less—did that appear—we have been talking about Alpine—did that appear in these other enterprises, too? [1977] A. Yes.

Q. For instance, one of those instances would be Alpine Ice Cream. I believe you stated, commencing in May, 1949, the figure for sales was \$25,000 greater; that is, between the general ledger

(Testimony of Gerald E. Gorans.)

and the statement; that is, the statement furnished to Mr. Forster? A. That is correct.

Q. And when we refer to statement through all your testimony, have you been referring to these white typed sheets?

A. Well, where they appear, and they are there——

The Court: (Interposing) Is that an exhibit, Mr. Keesling?

Mr. Keesling: I am referring now to A-31.

Q. (By Mr. Keesling): Would that be illustrative where one shows balance sheet and one shows profit and loss statement?

A. We did not have copies of those for every month.

Q. But where you refer to a typed statement, that is the type of document you are referring to?

A. Yes.

Q. Actually, the information on that typed statement is transcribed from his working sheets and sometimes you have referred to his working sheets as a statement, have you?

A. I don't believe I have referred to them as a [1978] statement, always as a working sheet.

Q. The working sheet would be the large paper with the net information taken off onto this, and this is what you refer to as the statement?

A. That is correct.

Q. Then I understand that as between the general ledger and this type of statement for May, 1949, on Alpine Ice Cream for a period of seven

(Testimony of Gerald E. Gorans.)

months, the figure for sales was \$25,000, an even figure, greater than shown in the statement?

A. Well, the cumulative sales each month starting with May, through the month of November, for the general ledger, was \$25,000 greater than the amount appearing either on the statement or on the work sheets contained in the—in Mr. Taylor's file for Alpine Ice Cream Company.

Q. Was there any explanation in the ledger or in the statements concerning any of these transactions you have testified concerning explaining the reason why there was one figure in one book or one figure in a statement; or a particular figure in Mrs. Wilcox's information and a different figure in the ledger? Any explanation along with any of these?

A. None that I could find.

Q. Now, during that year, 1949, from May through November, that \$25,000 figure, the difference was carried through, but then on December, that \$25,000 to sales was [1979] restricted, was it not, in December, 1949?

A. Well, on the December statement for the year end, for the period from the first of May through December 31, 1949, covering the sales for that period, this \$25,000 was included in the statement which—prepared as of December 31st.

Q. But on that December 31st statement, another figure appeared, as I understand your testimony, and that was—that is, there appeared on the tax return a figure of \$25,000 less for notes payable? That is, the general ledger had one figure for

(Testimony of Gerald E. Gorans.)

notes payable and the tax return had a \$25,000 figure less for notes payable?

A. Figures for notes payable appearing in the general ledger for Alpine Ice Cream and a figure in the general ledger for Arctic Gardens, Incorporated, these two items were combined on a work sheet and totalled, and the total for those two amounts does not agree with the amount placed on the tax return as notes payable, by twenty-five thousand dollars.

Q. And again, is this not an overstatement of income, an error in favor of the Government, as to that isolated transaction?

A. It is an overstatement of income of Alpine Ice Cream Company.

Q. That is the corporation?

A. Of the corporation between May and December, [1980] 1949.

Q. Now, in view of these various changes from the figures furnished, and the figures as they appear in the ledger, in view of your testimony concerning those instances, is it correct that the general ledger correctly—or even—reflects the summary information furnished to Mr. Taylor?

A. May I have that question again?

Q. In view of this testimony concerning the differences in the figures appearing in the information furnished and in the information as it appears in the general ledger, is it correct that the general ledger reflects the summary figures furnished to Mr. Taylor?

(Testimony of Gerald E. Gorans.)

A. Well, in specific instances, they do not, but I couldn't make a general statement they never did.

Q. No, but in all these we have talked about, they did not? A. That is correct.

Q. Without explanation in the record, is that right?

Now, referring to the same type of transaction, and I refer now to the record in evidence of the inventory of Finstad and Utgard, you examined those figures, did you, as to the inventory figures furnished by Mrs. Simonson?

A. I compared the figures, the typewritten figures, prepared by Mrs. Simonson with the amounts recorded in the [1981] general ledger.

Q. As I understand your testimony for December, 1946, the inventory figure as it appears in Mr. Taylor's ledger is exactly ten thousand less than the inventory figure furnished by Mrs. Simonson?

A. Yes, that is correct.

Q. And I believe you further stated that the inventory figure on the tax return was exactly ten thousand dollars less than the figure furnished by Mrs. Simonson? A. That is correct.

Q. And then in December, 1948, I believe that you testified that the inventory figure appearing in the general ledger of Mr. Taylor was exactly four thousand dollars less than the inventory figure furnished by Mrs. Simonson?

A. The typed figures furnished by Mrs. Simonson were four thousand dollars greater than the amount recorded in the general ledger.

(Testimony of Gerald E. Gorans.)

Q. You were here when she testified?

A. Yes.

Q. Those were the amounts she presented?

A. Yes.

Q. And the amount in the general ledger, four thousand dollars less than on inventory?

A. That is correct.

Q. And was that not carried through to the tax return [1982] showing an amount four thousand dollars less on the tax return than appears on the records of Mrs. Simonson which were furnished to Mr. Taylor? A. That is correct.

Q. So, in view of that testimony, then, relative to figures furnished by Mrs. Simonson as to the inventory and the figures in the reduced amount of ten thousand and four thousand as they appear in the general ledger of Mr. Taylor, would you say that Mr. Taylor's general ledger reflects the summary figures furnished to him?

A. They don't for Finstad and Utgard in these two instances.

Q. Now, going to Issaquah Creamery Company, I believe you stated that you had never seen so few books for the size of the operation.

Would you state just what they did have in the way of books during the Indictment period, briefly, please?

A. Issaquah Creamery Company had a sales record with one set prepared for each day, and the figures were placed on that.

They had an accounts receivable record. There

(Testimony of Gerald E. Gorans.)

was a combination cash disbursement book and accounts payable register, which we have here in evidence. And then, the general ledger, and that, basically, was all of [1983] the formal accounting records that were kept at Issaquah Creamery Company.

Q. And the general ledger, of course, was being kept in the office of Mr. Taylor, so far as you know?

A. Yes.

Q. It was not kept at Issaquah by Mr. Erickson?

A. No, it was not.

Q. When your firm took over the keeping of the general ledger, were the qualifications of Mr. Erickson inquired into as keeping a general ledger?

Mr. Moriarty: Objected to as immaterial, when they took over on that.

Mr. Keesling: A report at that time would have a direct bearing on his knowledge.

The Court: I think the form of the question is objectionable. The Court will sustain the objection.

Q. (By Mr. Keesling): From your examination of the work of Mr. Erickson, of the records in evidence during the Indictment period, do you have an opinion as to whether he is qualified or not to keep the general ledger?

Mr. Moriarty: Objected to as incompetent and irrelevant.

The Court: Are you talking about Mr. Erickson?

Mr. Keesling: Yes. [1984]

The Court: Is the question put as to Mr. Erickson, Mr. Keesling?

(Testimony of Gerald E. Gorans.)

Mr. Keesling: Yes, sir.

The Court: He didn't keep a general ledger, did he?

The Witness: No.

Mr. Keesling: I ask, from his examination of the books and records in evidence, does he have an opinion as to whether Mr. Erickson would be competent to keep a general ledger.

The Court: I don't think that is material. Objection sustained.

Q. (By Mr. Keesling): Will you tell the Jury just exactly what type of work Mr. Erickson was doing? He was being paid \$225 a month. Would you tell them what he was doing for that?

Mr. Moriarty: Just a moment, I object to that as hearsay because this witness didn't get out there until May, 1950. What he was doing during the period——

Mr. Keesling: (Interposing) I will rephrase the question to eliminate the objection.

Q. (By Mr. Keesling continuing): You have examined the books and records of Issaquah Creamery here that were kept by Mr. Erickson?

A. Yes. [1985]

Q. Would you tell the Jury just what type of record that is?

A. Well, basically, it is clerical work writing checks and recording the checks, and entering them in this book was the greater part of his job.

Q. He didn't keep the general ledger, and he didn't make out the taxes?

(Testimony of Gerald E. Gorans.)

Mr. Moriarty: Objected to as repetition, five times in the examination we have had the general ledger in Seattle and not Issaquah.

The Court: I think the general ledger——

Mr. Keesling: (Interposing) I won't argue.

The Court: You may restate the question, Mr. Keesling.

Q. (By Mr. Keesling): The work that was done by Mr. Erickson at Issaquah was merely the subsidiary work which went into the general ledger?

A. That is correct.

Q. And that particular work was not part of the direct making out of the tax returns; it was information furnished along the way, but so far as you know, he had nothing to do with actually making out tax returns?

Mr. Moriarty: Object to the form.

Mr. Keesling: I am merely trying to point out exactly [1986] what he did.

Mr. Moriarty: I think he is arguing his case, rather than asking a question.

The Court: If he knows, you may state.

A. I understand that the only tax return he prepared was the payroll tax return. The other tax returns were prepared by somebody else.

Q. (By Mr. Keesling): That would be withholding tax?

A. Withholding tax and State Unemployment Tax.

Q. I am referring to income tax of the corporation.
A. No, he did not prepare those.

(Testimony of Gerald E. Gorans.)

Q. Now, there was a reference made yesterday by Mr. Patten to your chart, and the numbers on it. Assuming that in these books of account kept by Mr. Erickson, these were the ones with the brown cover, are they not, 248? A. Yes.

Q. And the similar ones for the various years, they start with 1945 and go through 1949. Referring to that particular book——

The Court: (Interposing) That is Exhibit 248?

The Witness: Yes, sir.

Mr. Keesling: Incidentally, if the Court would like at this time, it won't be necessary for the Jury to keep those papers. [1987]

The Court: All right. We may as well collect them now before we recess. If you have a question or two, that you want to put——

Q. (By Mr. Keesling interposing): In that book, there are other columns with a heading which is similar to these code numbers, is that correct? —the expense column is all miscellaneous?

A. That is correct.

Q. It is in the miscellaneous column, and Mr. Erickson put everything in that miscellaneous column? A. That is correct.

Q. In reference to this chart, assuming every one of those had been given some kind of a number, would that have assured a proper tax return?

A. Not by numbers alone. It would depend on how the amounts were recorded in the general ledger, and how they were taken from the general ledger and placed on the tax return.

(Testimony of Gerald E. Gorans.)

Q. As a matter of fact, breaking down the account and the various types of business accounts is primarily for the information of the owner, is it not?

A. Well, I think that that was done prior to the enactment of the Income Tax Act and——

Q. (Interposing) Now—Go ahead. [1988]

A. (Continuing) And I don't know for sure whether the Internal Revenue Code provides that it is necessary for a taxpayer to break down his expenses in accordance with the way they have set the tax return form out so that so much is set forth as depreciation and so much salaries and wages.

Q. From the standpoint of taxes, for instance, if you took this Code number for truck expense, in the way these books were actually kept, is it not true that under truck expense they put oil and gasoline, and they put—well, other items that are usually segregated into various accounts?

A. That is correct.

Q. And, as a matter of fact, whether the account is thrown into one code number or another code number from the standpoint of taxes, it is an expense regardless of what code number appears? If it is a business expense, it is a business expense?

A. That is right.

Q. And is deductible for taxes, regardless of what the Code number might be?

A. That is right.

Mr. Keesling: Do you want to recess?

The Court: Ladies and Gentlemen of the Jury:

(Testimony of Gerald E. Gorans.)

We will now recess for the day. The Court calls your attention [1989] to the admonition given you on similar occasions and asks that you heed it on this occasion.

You will now be excused until tomorrow morning at ten o'clock.

(Whereupon, the Jury retired from the courtroom.)

The Court: This case will be recessed until tomorrow morning at ten o'clock, and the Court will remain in session.

(Whereupon, at 4:03 o'clock p.m. March 23, 1954, a recess was had in the within-entitled and numbered cause until 10:00 o'clock a.m. March 24, 1954.)

* * * * *

GERALD E. GORANS

upon being recalled as a witness for and on behalf of the Defendant Forster, and having been previously duly sworn, resumed the witness stand and testified as follows:

Cross Examination

Q. (By Mr. Keesling): Mr. Gorans, you stated yesterday that the inventory figures in Mr. Taylor's general ledger, and the tax returns, were respectively four thousand and ten thousand less than the figures as they were furnished by Mrs. Simonson; do you recall that testimony? A. Yes.

Q. And then you stated as to a number of various instances where there were adjustments or mis-

(Testimony of Gerald E. Gorans.)

takes involving errors which were in favor of the Government, and I believe one of them amounted to some \$27,000.

That is, they were in favor. As to that isolated instance, it overstated income?

A. That is correct.

Q. Now, did this same type of discrepancy appear in the books of other Forster enterprises examined by you? A. Yes.

Q. What were those enterprises or companies?

A. There was Renton Ice and Ice Cream.

Q. And will you state the various discrepancies?

Mr. Cox: Will you specify the period, please, Counsel?

The Court: These matters were not covered in cross; I mean direct and the Court would limit it.

Mr. Cox: We would object.

Mr. Moriarty: We join in the objection.

Q. (By Mr. Keesling continuing): If you will, just state broadly the particular item so that we will know ahead of time whether it was covered on direct.

Mr. Cox: We object to the form of the question unless counsel specifies the period referred to. I don't think it is proper cross-examination.

Mr. Keesling: I will ask in this manner:

Q. (By Mr. Keesling continuing): First, what were those companies?

A. Renton Ice and Ice Cream Company. I think there was one instance in Issaquah Creamery Company.

(Testimony of Gerald E. Gorans.)

Q. That is, other than those we have covered; we have taken Alpine Ice Cream, and we have taken Finstad and Utgard as to the inventory figures, and we have taken Alpine Dairy. Those would be included in the rest, would it not? [2000]

A. That is correct. Those were the only ones I remember at the moment that there was any difference.

Q. In respect to the discrepancy to which you have previously testified, limited to that, what were those discrepancies that we have not already covered, if there were any?

Mr. Moriarty: Objected to as repetitious.

The Court: Objection sustained.

Q. (By Mr. Keesling): Going to the Issaquah Creamery account, with respect to the Consolidated invoices, and the Stevenson check and the milk draft items you mentioned that they had been discovered during the investigation. It is true, is it not, that Mr. Erickson specifically pointed out these items? That is, it was Mr. Erickson who brought it to your attention? A. That is correct.

Q. Now, Mr. Cox asked you about differences in the general ledger of Mr. Taylor, and the figures furnished by Mr. Erickson, and in particular, the accounts receivable postings.

Is it correct that the accounts receivable as they appeared in Mr. Erickson's books, these cash disbursement books, represented by 264, your testimony was [2001] as to the 1949 ledger.

Is it true that that accounts receivable was not

(Testimony of Gerald E. Gorans.)

posted in the general ledger of Mr. Taylor to an accounts receivable account?

A. That is correct.

Q. As I understand it, it was posted to a whole-sale sales account? A. That is correct.

Q. And that that extended over some period of time?

A. It covered several months for the year 1949.

Q. Now, Mr. Cox asked you at length about personal expense items concerning which you did not testify in Exhibit 279 and 280, the sheets furnished by the Government.

Now, is it true that it is a common and ordinary practice in many businesses to pay personal expenses of the owner and sometimes even of the employees on company's checks?

A. It is a common practice.

Q. Would you explain to the jury just what type of situations those would be?

Explain a little further.

Mr. Moriarty: Objected to as not proper cross-examination.

The Court: Objection sustained. [2002]

Q. (By Mr. Keesling continuing): It is a common practice? A. Yes.

Q. Now, in respect to all these checks, it is true, is it not, that they showed on their face to whom they were payable, and so far as your investigation revealed, those same payees named on the check were entered in the books of Mr. Erickson?

A. That is correct.

(Testimony of Gerald E. Gorans.)

Q. That is, the check would be made to Ed's Kennels and that same Ed's Kennels would appear on his books? A. That is correct.

Q. And, as a matter of fact, on the Dr. Hillory check, it was written right on the face—there was written right on the back, Betty and Joan Forster?

A. I recall that that appears on the bottom of the check in the left-hand corner.

Q. Now, it is really when the checks are taken care of in the final books of account—that is the deciding factor for tax purposes, is it not?

A. That is correct.

Q. So that there was nothing irregular in the fact that the business checks were written to pay personal expenses? [2003]

A. That is correct.

Q. So that there was nothing irregular in the fact that the business checks were written to pay personal expenses? A. No.

Q. That is the fact of the writing and paying them on business checks, personal and business expenses; in that, alone, there was nothing irregular—

A. (Interposing) No.

Q. (Continuing) —from the standpoint of business practice.

That it was how they were finally charged in the books that the matter was not correctly taken care of for tax purposes?

Mr. Moriarty: Objected to as not proper cross-examination and argumentative.

(Testimony of Gerald E. Gorans.)

The Court: Objection sustained.

Mr. Keesling: If your Honor please, Mr. Cox went at length into these personal check items.

The Court: As you said yourself you questioned at length, and you said that the witness didn't testify on direct.

Mr. Keesling: He got his questions in by saying "You did not testify to this," but brought the matter to the attention of the jury and gave them the list of the [2004] checks.

The Court: It seems to me you are doing the same thing.

Mr. Keesling: By saying he did not.

The Court: If you wish to make the witness your own at a later time, you may do so.

Mr. Keesling: I will go on.

Will you mark this as Defendants' Exhibit next in order, please?

The Clerk: Defendants' Exhibit No. A-51 marked for identification.

(Defendants' Exhibit No. A-51 marked for identification.)

Q. (By Mr. Keesling): Showing you what has been marked as Defendants' Exhibit No. A-51 for identification, will you identify that, please, if you can?

A. Well, this is Mr. Taylor's work sheet for Issaquah Creamery Company for the month ended March 31, 1949.

Mr. Obenour: What is the date?

(Testimony of Gerald E. Gorans.)

Mr. Keesling: March 31, 1949. I will offer that in evidence.

Mr. Moriarty: No objection.

Mr. Griffin: No objection. [2005]

(Whereupon, there was a brief pause.)

Mr. Cox: We would object to Defendants' Exhibit A-51 for identification on our standing ground of the violation of privilege and the manner in which it was obtained, and on the ground it is irrelevant and immaterial, and not proper cross-examination and going into a period to which the witness testified to nothing on direct with regard to Issaquah Creamery.

The Court: As to the first objection, the Court would overrule.

Mr. Cox: Yes, sir.

The Court: As to the other, it isn't apparent to me what the purpose is, or whether it goes to a matter covered on original direct or not.

Mr. Keesling: It pertains to the manner of the bookkeeping of Mr. Taylor.

The Court: A phase covered by direct examination?

Mr. Keesling: Yes, to Issaquah Creamery.

Mr. Cox: As to a phase of the Issaquah books covered on direct.

The Court: Or to an item?

Mr. Keesling: It pertains to his general ledger accounts.

The Court: If it has relationship to some matter [2006] covered on direct—

(Testimony of Gerald E. Gorans.)

Mr. Keesling: (Interposing) Yes.

The Court: (Continuing) —I would admit it with that understanding. I can't tell now and would have to accept your representation. Of course, if it is a matter that isn't covered by direct or doesn't have some relationship to it, it might be admissible later in your case.

Mr. Keesling: I think it is admissible at this time, your Honor. I don't have a transcript of the exact testimony, but if he will, he can object further if it gets into a phase he feels isn't proper direct.

The Court: He has the other objection made, and the Court will overrule as to admissibility on those grounds, and it is admitted conditionally.

(Defendants' Exhibit No. A-41 admitted into evidence.)

Q. (By Mr. Keesling): Referring to Exhibit A-51, what figure, if any, appears there for the inventory items?

Mr. Cox: Objected to as not proper cross-examination. The witness did not testify on direct as to any matters of inventory.

The Court: I will ask the witness, did you cover any matters relating to the inventory of Issaquah [2007] Creamery?

The Witness: Generally, all I covered was the fact that the inventory sheets themselves could not be located.

A Juror: We can't hear.

The Witness: I testified to the fact that the in-

(Testimony of Gerald E. Gorans.)

ventory sheets themselves could not be located for Issaquah Creamery Company.

The Court: And that is what that pertains to?

The Witness: This pertains to an inventory figure used on the financial statement.

Mr. Cox: But it doesn't pertain to the availability or non-availability of the inventory sheet.

Mr. Keesling: This evidence, and further evidence I will have, goes to the question—he stated there were no inventory figures available, and this will, I believe, show that there were inventory figures available.

Mr. Cox: No. As I understand the witness' testimony, there was no regular permanent record in which inventory figures were recorded. We have already in the record at least one exhibit which contains an inventory figure—two exhibits which contain inventory figures. I think it is agreed that as reported either on separate slips of paper or as appearing in numerous work sheets of [2208] the financial statements of Mr. Taylor, that there are a good many figures already in the record showing inventory of Issaquah Creamery. This witness did not testify on direct as to the manner of recording inventory accounts of Issaquah, and, therefore, it is improper to go into it on cross.

Mr. Keesling: He testified on inventory.

The Court: It seems to me the objection is well taken at this point, Mr. Keesling. Now, in attempting to confine the testimony of a witness to matters covered in direct examination, there may be some

(Testimony of Gerald E. Gorans.)

relationship when you put on your case, and I take it your examination at this time with this witness would relate to matters that would have particular bearing on your client, Mr. Erickson.

Mr. Keesling: My principal purpose is that he brought out the fact on direct testimony that there were no inventory figures available on direct.

The Court: Inventory sheets.

Mr. Keesling: I think he said inventory figures, and I think we are entitled to show he did have inventory figures, and the inventory figures that were available on the subsidiary and collateral records, although this particular book does not have an inventory column and he said that it did not.

Mr. Cox: As I have already stated to the Court, it is amply demonstrated that there are inventory figures.

Mr. Keesling: I am not bound by what is demonstrated.

Mr. Cox: You are bound by what the witness testified on direct.

Mr. Keesling: I can choose any witness I wish as to the testimony.

The Court: Mr. Griffin, do you wish to be heard?

Mr. Griffin: Yes. This is our witness, one for the Defendant Forster. As I view it, he testified to the entire books and records in evidence here. We interrogated as to specific matters in them. I cannot conceive that upon cross-examination, both the Government and any defendant can cross-examine as to other items in those books that in any way reflects

(Testimony of Gerald E. Gorans.)

upon his testimony. We could have kept this witness on the stand for a week in direct examination on item after item in these books. Now, it seems to me, while we didn't do it, he testified to them generally, and we placed him there for cross-examination and that I certainly would think that if I was cross-examining for a defendant, he having testified to the adequacy and inadequacy of these [2010] books and records and specifically this item of inventory, that I could cross-examine him as to the contents of these books and records and anything that directly and indirectly was involved in the books and records testified to.

Mr. Keesling: He also testified he had work on this thing for four years, and indicated the scope and covered the whole field.

The Court: There has to be some limitation on the matter. One matter might be cross-examination by the Government. Another situation might be a defendant, another defendant, who may, in effect, cross-examine, but I don't believe that the cross-examination of another defendant on matters that does not have some direct relationship to the defendant as brought out on direct or cross-examination of the Government, it seems to me, doesn't properly come within the scope of the examination.

Mr. Keesling: Well, this will have a direct relationship in that these figures, as we put them in, will show that most of these inventory figures will be a comparison of the inventory figures furnished by Mr. Erickson in his handwriting, as compared

(Testimony of Gerald E. Gorans.)

with the inventory figures used by Mr. Taylor in the books he has examined and the working papers.

Mr. Cox: We would object, if the Court please, on the additional ground that this is irrelevant and immaterial to the defense of Mr. Erickson, because it doesn't bear on any point in the Government's case—has any relevance to the guilt or innocence.

Mr. Keesling: This will be vital to the defense of Mr. Erickson. For the record, it will show he furnished the proper figures and they were not used. For what reason, I don't know.

Mr. Cox: I don't recall in the Government's case where they went into the matter of inventory.

The Court: Mr. Moriarty?

Mr. Moriarty: If this is an attempt to impeach Mr. Gorans' testimony, it is our position that no foundation has been laid. If it is an attempt to state something about the records in March, 1949, the only time they are pertinent so far as this witness's testimony, as I take it, it would be at the end of December.

Mr. Keesling: Well, we will not limit our case to the end of December.

The Court: This isn't your case.

Mr. Keesling: It is when he gets on the stand and testifies to various figures throughout 1949 and the Indictment period.

The Court: Insofar as it has relationship to [2012] matters he testifies to.

Mr. Keesling: My purpose is to fill out the picture and the records are inadequate.

(Testimony of Gerald E. Gorans.)

The Court: I think perhaps we might proceed with some of the examination to see where we go, and you may make a motion to strike, Mr. Cox, after we proceed if it doesn't appear to be somewhat related.

Mr. Keesling: I think it all bears on the question of adequate records.

Mr. Cox: It is obviously at the outset it is not related.

Mr. Keesling: Your Honor, Mr. Cox and all counsel asked the witness do the records as furnished by Mr. Erickson and Mrs. Wilcox agree with Mr. Taylor's?

Mr. Cox: I asked with respect to the discrepancies he testified to, and whether those alleged discrepancies had any relation to the Government's proof by which the Government sought to establish tax evasion. I was directing my attention to the alleged discrepancies at Issaquah and Alpine.

Mr. Keesling: He put the broad question as to whether the books of Mr. Taylor reflected the figures of Mr. Erickson. I have to show that they did not. He has established part of his defense in that matter. Now, I want to show exactly that they did not reflect and the [2013] reason for not reflecting is not important. I just want to get to the point they did not.

Mr. Moriarty: I take it he is impeaching.

The Court: We will have to proceed, and what the materiality is, I don't know. I will advise the jury: in regard to this testimony, it may be stricken

(Testimony of Gerald E. Gorans.)

as we proceed, and bear in mind that possible action as you listen to this testimony. Objection overruled.

Mr. Keesling: I will confine it to the Issaquah situation.

Q. (By Mr. Keesling): Mr. Gorans, what figure appears as inventory on the exhibit before you, Exhibit A-5? A. A-51.

Q. A-51, the working sheet.

A. There is an amount in here that shows a negative inventory of five thousand seven hundred eighty-nine dollars and eighteen cents.

Q. A minus amount, did you say?

A. Yes.

Q. Now, you have testified as to minus cash in the various records. Is it possible to have a minus inventory?

A. No, it is not. It is a physical impossibility.

Q. In going through the various records of Issaquah Creamery as to——

Mr. Cox: Have you concluded with the item?

Mr. Keesling: Yes.

Mr. Cox: I would move to strike on the ground it has no relation to anything on direct.

The Court: The motion is granted, and the admission of the document is stricken, and the Jury will disregard it.

(Defendants' Exhibit No. A-51 excluded.)

Q. (By Mr. Keesling): In going through the various records in this case, you have come across various slips showing inventory figures in the handwriting of Mr. Erickson, have you not?

(Testimony of Gerald E. Gorans.)

A. In some of Mr. Erickson's working papers, have been papers with inventory written on them, and the date and the amount.

Q. Now, an inventory figure is an essential item in the computation of the tax liability, is it not?

Mr. Cox: We object to this on the same ground.

Mr. Keesling: If the Court will sustain it, my purpose is clearly this: that throughout the questioning they have attempted to establish that the general ledger and working papers of Mr. Taylor reflected the figures as [2015] furnished by Mr. Erickson.

Now, the entire purpose of my examination at this time is to show by the books and records here and in evidence and some were put in evidence, that they do not reflect the figures furnished by Mr. Erickson; so, if the Court feels that that is not proper cross-examination, then at this time, I would like a ruling on it and then I will bring it in at a later date; but I think it is entirely proper in view of this question of whether the records were adequate and the fact he has gone into all the records and further, and specifically, as I have stated, as counsel upon Mr. Taylor's behalf asked, "Do the records of Mr. Taylor's reflect the figures as given by Mr. Erickson?", and what they are trying to do with me now is to limit me to the exact items they spoke of.

The Court: Mr. Keesling, the Court's ruling here is based not on the ground that what you say

(Testimony of Gerald E. Gorans.)

you wish to show cannot be demonstrated by other evidence.

Mr. Keesling: The question is whether now or at a later time, whether cross-examination or direct?

The Court: Yes. There has been cross-examination of this witness by counsel for Mr. Taylor, but those matters were not necessarily covered by the direct examination. [2016]

Mr. Keesling: Well, I feel they were covered in view of the broad general questioning they put to him: "Do the records of Mr. Taylor reflect the figures covered by Mr. Erickson?"

The Court: In other words, it is your contention that they, having asked the question on their examination, regardless of the character of the direct or Government's cross-examination, that the mere going into it on their part permits you to go into it. That would permit on redirect examination to again go into——

Mr. Keesling: Well, I have in mind this particular question:

The Court: ——the matter further.

Mr. Keesling: I understand there has to be some reasonable limitation to the scope of cross-examination, but I have in mind this particular question asked by Mr. Cox. He stated it substantially as follows:

"Mr. Gorans, can you show me of any incident where the books of Mr. Taylor do not reflect the figures of Mr. Erickson?"

And Mr. Gorans said:

(Testimony of Gerald E. Gorans.)

“Yes, I can show you.”

And he went into the question that I have just talked about, the accounts receivable, of Mr. Erickson, are [2017] not reflected on the books of Mr. Taylor; when he put that question, he said:

“Mr. Gorans, can you show me any instance * * *”

And Mr. Gorans showed him at that time one and I don’t know whether he showed him more, but I think Mr. Cox opened that wide open at that time. Now, I want to show that there are instances in there in the record and they are in the evidence.

The Court: Well, when this testimony was offered originally, and objected to, it was directed towards the keeping of books, particularly by Mr. Taylor; is that correct?

Mr. Keesling: Yes, as compared with Mr. Erickson’s figures.

The Court: That is the way this testimony has come in. Now, to extend the testimony to all phases of the books, and to extend the testimony to all purposes——

Mr. Keesling: (Interposing) I just want——

The Court: (Continuing) ——seems to me to completely open it up.

Mr. Keesling: I just want to limit it to this particular phase: The places——there will be only a few,——or the question of where Mr. Taylor’s books and records [2018] do not reflect the figures furnished by Mr. Erickson——strictly to that question.

The Court: It may be you can phrase a question on that line.

(Testimony of Gerald E. Gorans.)

Yes, Mr. Moriarty?

Mr. Moriarty: It seems to me that this is cross-examination of a defense counsel on another cross-examination of a defense counsel.

If Mr. Keesling desires to use Mr. Gorans, he can call him as a witness at the proper time, but this is hardly the way to cross-examine a witness presented by the defense.

Mr. Griffin: If the Court please, I suggest to you that the cross-examination of the Government of this witness opened every phase of these books. We made a note of it at the time at this table here, at the time the Government examined. We are forgetting the cross-examination by Mr. Cox to which I did not object, because my position is that any defendant or the Government can go into any phase, but I suggest we are forgetting the cross-examination of this witness by the Government which opened every phase of every book under his audit.

Mr. Moriarty: That is a broad statement. He is cross-examining on Mr. Cox's cross-examination.

The Court: You might state your question, if [2019] you have another question to put.

Mr. Keesling: Would you read the last question?

Mr. Griffin: Before he does, I understand you have stricken A-51 as I understood your Honor's ruling.

The Court: That is correct.

It was admitted conditionally, and I struck it on motion of Mr. Cox, and no further questions were put regarding that.

(Testimony of Gerald E. Gorans.)

Mr. Keesling: Will you read the last question?

(Whereupon, preceding question was read by the reporter.)

Mr. Cox: We repeat our objection.

The Court: And the objection is sustained although I think maybe on other questions relating it to some specific matter, Mr. Keesling, it might be proper, and that is what I suggest you do now.

Mr. Keesling: I will limit it to these particular items.

Q. (By Mr. Keesling): Showing you Defendants' Exhibit A-31 in evidence, that is one of the inventory slips you referred to that you had seen in the records of the various companies?

Mr. Cox: Same objection. [2020]

A. Yes, it is.

The Court: That was referred to sometime along the line.

Mr. Griffin: The Government cross-examined on it.

Mr. Cox: A-31?

Mr. Griffin: A-31.

The Court: A-31. Objection overruled.

Q. (By Mr. Keesling): Attached to it are two statements which you previously referred to. One is the balance sheet and the other is the profit and loss statement prepared by Mr. Taylor: is that right? A. Yes.

Q. Now, showing you Exhibits A-28, this is the working paper of Mr. Taylor, is it not, for the same month as is represented by the month—as

(Testimony of Gerald E. Gorans.)

represented by A-31? That would be April of 1949?

A. I don't understand that question.

Q. Does it represent the same period, A-28 and A-31?

A. A-28 and A-31 represent the same period; they cover the same time.

Q. They cover April, 1949; this one has been stricken, this previous month. I will just take this.

A. Well, A-31 and A-28 cover the same period.

Q. That is my question; is there a difference between the inventory figure shown on the slips in Mr. Erickson's handwriting, and that shown on the profit and loss statement prepared by Mr. Taylor?

A. Yes, there is.

Mr. Cox: Not proper cross-examination.

The Court: It is my recollection they were covered.

Mr. Keesling: Yes.

The Court: So the objection is overruled.

Q. (By Mr. Keesling): You say there is a difference? A. Yes, there is a difference.

Q. What is that difference?

A. The figure in the profit and loss statement and the balance sheet is ten thousand dollars less than the figure appearing on the paper marked "inventory".

Q. In Mr. Erickson's handwriting?

A. Yes.

Q. Does the balance sheet also show an inventory figure exactly ten thousand dollars less than the Erickson slip? A. Yes, it does.

(Testimony of Gerald E. Gorans.)

Q. And does the working paper of Mr. Taylor show an [2022] inventory figure exactly ten thousand dollars less than the inventory figure shown on the slip of Mr. Erickson? A. Yes.

Q. Now, will you trace that inventory figure into the general ledger kept by Mr. Taylor?

Well, I can ask you this:

Have you traced that figure, 276?

A. Yes, at some time or other, I have traced it in, I think it is, this book right here. No, the black one.

(Whereupon, document was handed the witness.)

The Clerk: 271, isn't it?

The Witness: It is 271.

The Court: 271.

A. (Continuing) It does not appear in the general ledger for 1948. The same figure appears in the general ledger for 1949, but there is no date to indicate when it might have been posted here.

Q. (By Mr. Keesling): Is the inventory figure in the general ledger of Mr. Taylor exactly ten thousand dollars less than the inventory figure furnished on Mr. Erickson's slip?

A. Yes, it is. [2023]

Mr. Keesling: At this time, I would like to have marked for identification these two items. They could be marked as one exhibit.

The Clerk: Exhibit A-52 marked for identification.

(Testimony of Gerald E. Gorans.)

(Defendants' Exhibit No. A-52 marked for identification.)

Q. (By Mr. Keesling): Showing you Defendants' Exhibit A-52 will you identify that, if you can?

A. This is a work sheet for Issaquah Creamery Company for the month ended April 30, 1949, and attached to it is a sheet of paper which has noted on it "Inventory, April 30, 1949," and there are three figures on the one side of the sheet and several on the back side.

Q. Do you recognize the inventory figure in the handwriting of Mr. Erickson? A. Yes.

Q. And the working paper, do you recognize that as the handwriting of Mr. Taylor?

A. Yes, it is.

Mr. Keesling: We will offer A-52.

Mr. Cox: We would object to it on the same grounds we objected to A-51, that it was obtained violating Mr. Taylor's privilege and not in a matter gone into on [2024] direct and irrelevant to the defense of Mr. Erickson so far as any charge brought by the Government against him in this case.

The Court: There is no greater connection in this case than the other, is there, Mr. Keesling?

Mr. Keesling: It is exactly the same type of situation where he furnished one figure, and another figure was used, only in this case, it was fifty thousand and ten thousand. That difference. Exactly the same situation, and it refers to the Government's cross-examination, or direct examination,

(Testimony of Gerald E. Gorans.)

where they went into the question of whether the figures furnished by Mr. Erickson were reflected in Mr. Taylor's books.

Mr. Moriarty: The Government had no direct examination of this witness. This is a defense witness.

The Court: The Government's cross-examination.

Mr. Keesling: The Government's cross; excuse me.

The Court: The Court's ruling would be the same, in that it could be proper at the proper time with another witness, but that it is not admissible under the direct examination of this witness.

Mr. Keesling: I objected to their cross-examination.

The Court: Yes. [2025]

Mr. Keesling: If the Court wishes, we will hold it.

The Court: I will sustain the objection at this time. It has been identified. There is no question as to identification.

Mr. Cox: No, your Honor.

Mr. Keesling: I have no further questions, your Honor.

Redirect Examination

Q. (By Mr. Brody): Now, Mr. Gorans, referring to the Alpine Ice Cream Company about which Mr. Patten questioned you, was the Alpine Ice Cream Company one of the companies mentioned in the

(Testimony of Gerald E. Gorans.)

memorandum of April 26, 1950, which you read?

A. Yes, it was.

Q. And when you first met Mr. Forster, May 1, 1950, was there any discussion concerning the Alpine Ice Cream Company?

A. I think we discussed all the companies at that time.

Q. And you then learned on those dates that there was such a company as the Alpine Ice Cream Company? A. Yes.

Q. I wonder if you would just state very briefly [2026] then what the circumstances were concerning the finding of past records of Alpine Ice Cream Company?

A. Well, we noted these checks, and the bank statements for Alpine Ice Cream Company at the time we brought the records into this separate office that we had rented when I was working with Mr. Marx, and the statements covered a period prior to May 1, 1949, which date I knew that the Alpine Ice Cream Corporation had come into existence, and the thing at that time, we didn't—we did not know that back during the years 1944 up to May 1, 1949, that there had been a bank account in the name of Alpine Ice Cream Company.

Q. Did Mr. Forster ever conceal from you the existence of the Alpine Ice Cream Company?

A. No.

Q. I would like to ask you a few questions about Plaintiff's Exhibit 198, which was the analysis.

(Testimony of Gerald E. Gorans.)

Mr. Brody: I am sorry, Mr. Bell. I refer to the analysis of account 198.

Mr. Cox: 71.

Mr. Brody: Which is 71.

(Whereupon, Exhibit was handed to Mr. Brody by the Clerk.)

The Clerk: 238?

Mr. Brody: Yes. [2027]

Q. (Continuing) Will you just state briefly how Exhibit 71 was compiled? How the information was obtained to place on there?

A. It was obtained through an analysis of deposit slips and studying the micro-film records of the Washington State Bank to identify the checks that were noted on the deposit slips. This was done—I think we analyzed the deposit slips—sometime the latter part of May or first of June of 1950 and the micro-film records were not searched until August or September of 1950.

Q. How many men did it take to do that job, Mr. Gorans?

A. I think two or three men worked on this, especially on the search of the micro-film records.

Q. And about how long a job was that?

A. I think it took them at least a week.

Q. Now, will you please examine Exhibit 238, which is one of the stipulations which has been entered into with the Government, consisting of a very lengthy list of 283 items deposited in Account No. 193?

Now, can you state whether the information, the

(Testimony of Gerald E. Gorans.)

items—contained in the stipulation, Exhibit 238, are in fact derived from Exhibit 71, the analysis of Account 198 prepared by Touche, Niven?

A. Well, there are probably four or five items on [2028] here that were not taken from the exhibit 71, but the rest of them came from this analysis of 198.

Q. Now, Mr. Patten asked a few questions concerning whether or not you had made certain calculations of the amount of tax due.

Now, are you prepared to make tax computations of tax due after conference with representatives of the Government on the matter of civil tax liability? A. Yes.

Q. And would you make such computation prior to your conference with Government representatives?

A. Well, until you can agree what the inventory figures are, there isn't much point in making a computation.

Mr. Cox: Pardon?

A. (Continuing) What the income figures are.

Q. (By Mr. Brody): And has a portion of the work that you have done for the Hans Forster enterprises, has that been directed toward the purpose of sitting down with the Government and determining what the civil tax liability is?

Mr. Moriarty: Objected to as not proper redirect.

Mr. Brody: Mr. Patten asked directly, your [2029] Honor.

The Court: Objection overruled.

(Testimony of Gerald E. Gorans.)

A. That was the understanding of what we were doing the work for, so that we could determine what the civil liability was.

Q. (By Mr. Brody): And why haven't you sat down with the Government and determined that civil liability yet?

Mr. Moriarty: Same objection, if the Court please.

The Court: Well, I believe the matter was raised when the witness was questioned as to whether he had made a computation, and the objection is overruled.

A. Basically, because the Government refuses to discuss the civil liability until the trial with respect to the criminal action is concluded.

Q. (By Mr. Brody): Now, I just want to go over very briefly, Mr. Gorans, a few of the specific transactions concerning which you were examined on your direct, then on your cross-examination.

On the summary sheets provided by Mrs. Wilcox, to Mr. Taylor, were there certain columns marked "paid in" and "paid out"? A. Yes. [2030]

Q. Now, will you state, from your examination of the summary records and of Mr. Taylor's ledger, whether Mr. Taylor made use of the columns marked "paid in" and "paid out", or information contained in those columns when he made entries in his general ledger?

A. There is no indication——

Mr. Moriarty: (Interposing) Just a moment. Not proper redirect.

(Testimony of Gerald E. Gorans.)

Mr. Brody: Well, Mr. Patten asked about "paid in" and "paid out" and handed them up to the Jury.

Mr. Moriarty: It is hearsay what Mr. Taylor did or did not do.

Mr. Brody: The question is whether, from an examination of the books.

Mr. Moriarty: Mr. Taylor might not have been making the entries; it may have been someone in his employ, if he answers the question truthfully.

Mr. Brody: I think I can rephrase it to meet that objection.

Q. (By Mr. Brody): From your examination of Mr. Taylor's ledger,—

Mr. Moriarty: (Interposing) I object to the form of that question because they are not Mr. Taylor's ledger.

Mr. Brody: I think there is no question in the [2031] testimony so far, your Honor, as to who kept the ledgers.

Q. (By Mr. Brody): From your examination of the ledger of Alpine Dairy, can you state whether or not the figures contained in the "paid in" and "paid out" column of Mrs. Wilcox's reports were used to make entries in the ledger?

A. There is no indication in the general ledger that they were ever used.

Q. Now, would there be a connection between the failure to use those figures and the negative cash on hand which appears in the Alpine Dairy ledger?

A. Yes, it would.

Q. And would there be a connection between the

(Testimony of Gerald E. Gorans.)

failure to utilize that "paid in" and "paid out" information and the difference between the figure for cash on hand as shown in the Alpine Dairy ledger and the amount you actually determine to be the cash on hand?

Mr. Moriarty: Objected to as immaterial and irrelevant.

Mr. Brody: Whether or not there was such a connection?

The Court: Objection overruled.

The Witness: Could I have that question read [2032] back?

The Court: Mr. Brody, do you want it re-read?

Mr. Brody: I will restate it.

Q. (By Mr. Brody): Can you state whether or not there is a connection between the failure to utilize information contained in the "paid in" and "paid out" column of Mrs. Wilcox's report, and the difference which you determine to exist between cash on hand as shown in the Alpine Dairy ledger, December 31, 1949, and the amount you determine to be actually the cash on hand?

A. I think it would very definitely have a bearing on that.

The Court: This is an opinion you were asking for?

Mr. Brody: That is correct, your Honor.

Q. (By Mr. Brody): Now, will you state, in your opinion, what that connection is, in the simplest possible terms?

A. Into this "paid in" item we have been talk-

(Testimony of Gerald E. Gorans.)

ing about, miscellaneous items of income, refunds, and various items of that nature were included. There were items that were not received in the ordinary course of business, and from that, there are items that deducted such as "petty cash" disbursements, where they paid for [2033] freight at Alpine Dairy, and the net effect of those two items, the amounts paid in exceeded the amounts paid out, and the amounts paid in that exceeded the amount paid out were deposited in the bank account, and in making entries in the general ledger when the amount recorded as cash received as less than the amount deposited in the bank account and when the entry was made transferring cash from cash received to the bank account, the transfer to the bank account exceeded the actual amount placed into the cash account as having been received, and over a period of time, that would cause this difference to show up in cash on hand.

Q. Now, Mr. Cox questioned you concerning the sum of \$359,943.74, referred to by Mrs. Wilcox in her trial balance of accounts receivable, Exhibit A-37, and the entry of \$349,588.76, contained in Exhibit 272, the Alpine Dairy general ledger for December 31, 1949.

Now, taking into account the questions by, put on Mr. Cox's cross-examination, are you able now in any way to account for the difference of the approximately ten thousand dollars which exists between Mrs. Wilcox's report and the general ledger of Alpine Dairy in that same time?

(Testimony of Gerald E. Gorans.)

A. No, it is not satisfactorily accounted for.

Q. Now, concerning the figures for wholesale sales [2034] contained in Mrs. Wilcox's figures and Alpine Dairy general ledger for December 31, 1949, about which Mr. Cox questioned you extensively following his cross-examination, are you able now in any way to account for the difference of seven thousand dollars which exists between Mrs. Wilcox's summary, Exhibit A-36 and the figures contained in Mr. Taylor's ledger, Exhibit A-72?

A. Well, there is no explanation as to why the figures—why the figures differ.

Q. And did any of the factors on the work papers that Mr. Cox, as I recall, pointed out serve to explain to you why that difference existed? A. No.

Q. Now, concerning the figures for collections on accounts receivable for Alpine Dairy for December 31, 1949, was there anything in what Mr. Cox pointed out on his cross-examination, or anything in his questions, which explained to you or showed any adjustment to you, or gave a reason why the figures contained in the ledger, Exhibit 272, should be twelve thousand dollars greater for collections on accounts receivable than on the figures contained in Mrs. Wilcox's report?

Mr. Moriarty: Objected to as argumentative, and not proper cross-examination. [2035]

Mr. Brody: It goes to the examination Mr. Cox made, and asks for the reason for the difference.

Mr. Cox: I asked the witness what he knew about the figures.

(Testimony of Gerald E. Gorans.)

The Court: Well, I will overrule the objection.

If the witness—he is an expert witness—if he can answer the question, and throw further light on it, he may.

A. I have found no reason why that difference shows up there.

Q. (By Mr. Brody): And following Mr. Cox's cross examination on the questions contained in the——

Mr. Keesling: (Interposing) I can't hear you, counsel.

Q. (By Mr. Brody): Following Mr. Cox's questions put to you, are you now able to explain why on December 31, 1949, at the Alpine Dairy, the ledger entry in Exhibit 272 for cash receipts should have been five thousand dollars greater than the sum recorded in Mrs. Wilcox's report? A. No.

Q. Now, turning to Alpine Dairy on the date, December 31, 1947—— [2036]

(Whereupon, Mr. Griffin conferred with Mr. Brody.)

Mr. Brody: Oh, does your Honor wish a mid-morning recess?

The Court: Ladies and Gentlemen of the Jury:

We will now take the mid-morning recess, and the Court calls your attention to the admonition given on similar previous occasions, and asks that you heed it on this occasion.

(Whereupon, the jury retired from the courtroom.)

(Whereupon, at 11:04 o'clock a.m., a recess was had in the within-entitled and numbered

(Testimony of Gerald E. Gorans.)

cause until 11:16 o'clock a.m. March 24, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the jury.

(Whereupon, the jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

Mr. Brody: Yes, your Honor.

The Court: You may proceed, Mr. Brody. [2037]

Q. (By Mr. Brody): Mr. Gorans, we were at Alpine Dairy on December 31, 1947, and Mr. Cox questioned you concerning certain figures for cash receipts and wholesale sales.

In your examination of the books and records——

Mr. Keesling: (Interposing) Can you speak a little louder, please?

Q. (By Mr. Brody continuing): In your examination of the books and record of Alpine Dairy, Mr. Gorans, were you able to find any accounting adjustments which would account for the fact that Mr. Taylor's journal and ledger for Alpine Dairy showed \$14,000 more for cash receipts on December 31, 1947, than Mrs. Wilcox's report? A. No.

Q. And in your examination of these books and records of Alpine Dairy, were you able to find any accounting adjustment of any kind that would ex-

(Testimony of Gerald E. Gorans.)

plain why Mr. Taylor's journal and ledger for that date showed fourteen thousand dollars more whole-sale sales than Mrs. Wilcox's report? A. No.

Q. And, following Mr. Cox's examination, did you have any explanation for the difference between Mrs. Wilcox's reports and Mr. Taylor's journal and ledger? A. No. [2038]

Q. And, from your examination of the books and records of Alpine Dairy, were you able to discover any kind of an accounting adjustment that would explain why the combined sales figure shown on the tax return of Alpine Dairy for the year 1947 is thirteen thousand dollars greater than the combined sales contained in Mr. Taylor's ledger?

A. No.

Q. And was there anything in Mr. Cox's cross-examination which would point out or illustrate to you—— A. (Interposing) No.

Mr. Cox: I object to the form of the question that there should be something in my question to elucidate this. I was looking for information.

Q. (By Mr. Brody): Following Mr. Cox's examination are you able to explain the thirteen thousand dollar difference between Mr. Taylor's general ledger and the tax return of Alpine Dairy for the year 1947? A. No.

Q. Now, moving up to Finstad and Utgard, in your examination of the books and records and your audit of Finstad and Utgard, did you find any kind of an accounting adjustment of any kind which would explain why, in the year, for the year end,

(Testimony of Gerald E. Gorans.)

1946, the tax return in Mr. Taylor's ledger carries an inventory figure ten thousand dollars greater than that set forth in Mrs. Simonson's report?

A. The general ledger has a figure ten thousand dollars less than what is in Mrs. Simonson's report.

Q. I am corrected. Were you able to find any accounting adjustment which would explain why Mr. Taylor's ledger was ten thousand dollars less than Mrs. Simonson's report as to inventory?

A. No.

Q. And, in the year 1948, at Finstad and Utgard, did your audit and review of the books and records of Finstad and Utgard reveal any accounting adjustment of any kind which would explain why the inventory figure contained in the tax return for 1948, the inventory figure contained in Mr. Taylor's ledger, are four thousand dollars less than the amount of inventory contained in Mrs. Simonson's report? A. No.

Q. How frequently in your work, Mr. Gorans, do you have occasion to make such adjustments?

A. Adjustments between——

Q. Adjustments on a general ledger covering subsidiary documents and books and records?

A. Oh, it is a very common thing to do, to make adjustments to the general ledger.

Q. And in your experience as an accountant, would it be usual or unusual to discover such accounting adjustments in flat sums like ten thousand or fourteen thousand or twenty-seven thousand dollars?

(Testimony of Gerald E. Gorans.)

A. No. Normally, they are going to be in odd amounts.

Q. Can you explain, very briefly, why they would be in odd amounts?

A. Well, many of your adjustments result from improperly picking up a figure some place, or it can result from reconciliation, and as a general rule, the difference is going to be in odd amounts. It very seldom will be in even thousands of dollars, or even hundreds of dollars.

Q. Now, Mr. Gorans, Mr. Patten questioned you at some length about whether or not the Hans Forster enterprises had an adequate set of books.

Now, will you state, whether or not, in your opinion, there was such an adequate set of books for these businesses?

A. I don't believe there was.

Q. Now, what books, or what records,—what types of records in your opinion were necessary to properly [2041] record the transactions that were taking place?

Mr. Moriarty: Objected to as not proper redirect examination.

The Court: Objection sustained.

Mr. Brody: It seems to me, your Honor, that Mr. Patten's question went directly as to whether or not the then-existing books and records were adequate which would bring directly before the Court the question of what was an adequate set of books and records. He asked for Mr. Gorans' opinion, and I wanted to develop with this one question—I don't

(Testimony of Gerald E. Gorans.)

intend to pursue this any further—as to what was needed for an adequate set.

The Court: He answered he does not believe they were adequate and did not believe they were, Mr. Brody.

Mr. Brody: That is correct.

The Court: Your question goes as to that time?

Mr. Brody: Yes.

The Court: In what respect were they inadequate at that time?

Q. (By Mr. Brody): Well, what books and records during the years 1945 through 1949 would be needed?

Mr. Moriarty: This is a new set of books he is [2042] inquiring about?

Mr. Brody: Yes, a set of books not then in existence.

Mr. Moriarty: I don't think that is material or proper cross-examination.

The Court: I think as phrased it is not proper.

Perhaps you might cover it instead of having him set them forth——

Q. (By Mr. Brody interposing): Can you state in what respect, Mr. Gorans, the books and records during the years 1945 through 1949 were inadequate?

A. Well, in the first place, there was no general journal to explain some of these adjustments that were made, and to record these adjustments. There is not a sufficient breakdown of the—particularly these “paid in” and “paid out” items of Alpine

(Testimony of Gerald E. Gorans.)

Dairy, so that they could have been recorded as income or as expense in the general ledger.

Some of the general ledger accounts contained several groupings of items that should have been separated out, so that control could have been maintained over, for instance, notes receivable, and contracts receivable, and accounts receivable, rather than consolidating [2043] them all together.

It makes it—in so doing, it is easier to isolate the area in which errors exist, and easier to keep control of the detailed amount in support of the figure appearing in the general ledger.

Q. Is that a full answer, Mr. Gorans?

A. Well, there are other items, but I don't think of them at the moment.

Q. Well, I will go on——

The Court: (Interposing) Do you wish to refresh his recollection on other matters you have in mind? You may do so.

Mr. Brody: No, your Honor, I will proceed.

Q. (By Mr. Brody continuing): I will ask you, Mr. Gorans, whether or not the correct reporting and recording of information in subsidiary books of account, whether or not such correct reporting will ultimately lead to correct tax returns if the amounts contained in the subsidiary records are not accurately transferred to the general ledger?

The Witness: May I have that question read?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.) [2044]

(Testimony of Gerald E. Gorans.)

A. Well, unless the figures are accurately transferred to the general ledger, and then the amounts taken from the general ledger and properly recorded on the tax return, you cannot get a proper tax return.

Q. (By Mr. Brody): Now, so far as you know, Mr. Gorans, was the information contained in the subsidiary records from which you testified on your direct examination—was that information correct?

A. Well, limited to the items that I covered, we could find no reason why they were not correct.

Now, some of those items we didn't go back into the detail in back of them, because it is impossible to do so at this time.

Q. But, did you find any incorrectness, or did you find any inaccuracy or any error in the recording of the subsidiary records concerning which you testified on your direct examination? A. No.

Q. And then the differences, if any, were they differences between the subsidiary records and the general ledger and/or the tax return?

Mr. Moriarty: This is hardly proper redirect. Argumentative.

Mr. Brody: Well, the correctness was questioned [2045] by Mr. Cox.

Mr. Moriarty: What he could account for on the books.

Mr. Brody: The point I wish to raise here: The figures Mr. Gorans obtained in certain subsidiary records. Now, Mr. Cox brought up the question of the possibility of error resulting from error in com-

(Testimony of Gerald E. Gorans.)

piling the subsidiary records, and I simply want to ask Mr. Gorans whether from his review of these books and records to which he testified on his direct examination, the differences or errors arose from the reporting in the subsidiary information or from differences between the subsidiary information and the ledger and the tax returns.

Mr. Moriarty: Well, what Mr. Brody wishes to have him do is to state twice.

Mr. Brody: He did not state that picture. I did not ask him the question on direct.

Mr. Moriarty: Not in that form, but you asked around it about ten times.

The Court: You are asking the same question he just answered before only as to the——

Mr. Brody: (Interposing) Ledger and tax returns; that is right, as to whether or not error, if any, occurred.

The Court: The Court will overrule the objection. [2046]

Mr. Brody: Let me see if I can simplify and rephrase the question, your Honor.

The Court: There may be an objection to the new phraseology, Mr. Brody.

Mr. Brody: I accept your Honor's suggestion. Will the reporter please read the question?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. That is correct.

Q. (By Mr. Brody): Now, there were some

(Testimony of Gerald E. Gorans.)

questions from Mr. Cox about a limited engagement by an accountant.

I wish to ask you what, under any circumstances, the minimum responsibility is of a person who keeps a general ledger, and makes out Federal Income Tax returns?

Mr. Cox: I will object to the form of the question, "Is it a responsibility under law?"

Mr. Brody: I am asking the expert's opinion.

Mr. Cox: What the legal requirements are of the men who keep the general ledger?

The Court: Are you asking as to his practice or accepted practice?

Mr. Brody: I am asking his opinion, and this would go to the accepted practice of accountants.

Mr. Moriarty: Certified accountants?

Mr. Brody: Well, the question would go to any, licensed or certified, any licensed accountant under the law, may do this work.

The Court: First, you would have to determine whether there is such a recognized minimum responsibility?

Mr. Brody: Yes.

Q. (By Mr. Brody continuing): Mr. Gorans, is there recognized in the field of accountants a minimum standard of responsibility for a person who keeps a general ledger and makes out a Federal Income Tax return?

A. There are many regulations concerning people who are authorized to practice before the Treasury Department, having a Treasury card, but I

(Testimony of Gerald E. Gorans.)

don't know—and the American Institute of Accountants and the Washington Society of Certified Public Accountants has a Code of Ethics which restricts persons in certain areas, but I don't know whether licensed public accountants have any responsibilities.

Q. And, can you state, in the field of accounting in general whether there is any standard of responsibility?

Mr. Moriarty: Objected to as improper redirect.

Mr. Cox: He cannot tie it down to what Mr. Taylor——

The Court: (Interposing) I gather he didn't know of any standard for licensed public accountants. Is that correct?

The Witness: I don't know.

Mr. Cox: He can't answer the question.

Mr. Brody: May I simply inquire:

Q. (By Mr. Brody): Do you mean of any legislative standard, or a rule promulgated by an accounting society, or do you refer to lack of information as to such things?

A. Well, so far as I know, there is no formal legislation relative to licensed public accountants, and the only thing is, there is a responsibility that anyone has as an employer—employee relationship to——

Mr. Moriarty: (Interposing) I submit we are getting quite far afield.

Mr. Brody: We are exploring the qualifications.

(Testimony of Gerald E. Gorans.)

Mr. Moriarty: We are doing quite a bit of exploring, but I don't think it is pertinent.

Q. (By Mr. Brody): Is there a degree of responsibility as between employer and accountant which is recognized in the accounting profession?

Mr. Moriarty: It is improper.

The Court: I think the question you started was the minimum responsibility of an accountant.

Mr. Brody: That is correct.

The Court: I will have to sustain the objection to the question.

Mr. Brody: I simply want to inquire as to whether the witness is aware of such a standard as between an accountant and his client.

Mr. Moriarty: Hardly proper redirect.

Mr. Brody: It goes directly to Mr. Cox's examination. If the witness does know of such a standard, then it seems to me it would be admissible.

The Court: I will sustain the objection.

If there is a minimum standard accepted in the trade, that might probably be a—and he is familiar with it, he may state; but he indicated he doesn't know, and I believe that ends it at this point.

That is correct, is it not?

The Witness: Well, only——

The Court: (Interposing) Is that a statement of your conclusion?

Mr. Brody: No further questions.

The Court: Is that all?

Mr. Cox: Mr. Patten has some more. [2050]

The Court: Do you have some recross?

(Testimony of Gerald E. Gorans.)

Recross Examination

Q. (By Mr. Patten): Under examination by Mr. Brody and by Mr. Cox, you testified concerning a number of instances where the general ledger kept by Mr. Taylor and Mr. Taylor's work sheets differed from the subsidiary records by even amounts?

A. That is correct.

Q. I believe you termed those "adjustments" for which you could find no explanation?

A. That is correct.

Q. Can you tell us when was the first of the so-called unexplained adjustments which you discovered in the course of your investigation? Do you recall the date of the first such adjustment?

A. Well, I think about the first time I looked at the general ledger and tried to find out where some of the figures came from.

Q. I mean, what year? What year in the books?

The Court: Are you referring to a period covered in the Indictment?

Mr. Patten: No; he testified he went back as far as 1932. [2051]

Q. (By Mr. Patten): I believe, sir?

A. In certain areas.

Q. In certain areas; just generally, what was the first one of the—in what year did the first such adjustment occur, sir?

Mr. Cox: We object to that as being outside the Indictment period.

Q. (By Mr. Patten continuing): If you know, sir.

(Testimony of Gerald E. Gorans.)

A. Well, I don't remember just offhand, where the first one was, where the first adjustment appeared, that was unexplained.

Q. You don't recall the first one?

A. I don't recall.

Q. You stated that it was a common practice for company checks to be issued to pay the personal expenses of the owner, employees, and officers, of the business? A. That is right.

Q. Now, were all the checks which have been introduced in evidence here issued out of the regular company check books?

A. There are some that I don't believe are.

Q. They were regular counter checks, were they not? [2052]

A. Well, they are not—they were—I guess you would call them counter checks. They are not numbered, or they do not have the name of the person printed on them. They are just——

Q. (Interposing) With the name "Alpine" stamped on them? A. That is right.

Q. With a rubber stamp. Now, I believe you have testified that it is not a common practice for such checks to be charged to items of business expense.

Mr. Griffin: Wait a minute. The last preceding question was with regard to counter checks.

Mr. Patten: For both types checks.

Q. (By Mr. Patten continuing): For checks issued to pay personal expenses of an officer and

(Testimony of Gerald E. Gorans.)

employee, it is not a common practice for them to be claimed as expenses of the business, is it?

A. That is correct.

Q. Now, in your examination of—such checks are usually charged to drawing, or salary, or loans, or some type of receivable, are they not?

A. That is right.

Q. Now, in the books of the Issaquah Creamery Company and Alpine Dairy, such as Exhibit 264, will you [2053] explain what controls the account to which a particular check is charged?

Mr. Griffin: Objected to as not recross.

The Court: Is this a ledger?

The Witness: Cash disbursements.

The Court: Cash disbursements?

The Witness: It is Exhibit 264.

The Court: Of what?

The Witness: This happens to be Issaquah Creamery Company for 1948 that he has it opened to.

Mr. Patten: 1948.

The Court: It is difficult to see; if it relates to one of these personal expense items, it might be proper.

Mr. Griffin: We didn't examine on it. We cut off the examination. Mr. Keesling was cut off from examination. It was wide open then, and I think it was, but he was cut off, and as he is bound, I think the Government is.

The Court: What matter are you covering?

(Testimony of Gerald E. Gorans.)

Mr. Patten: Mr. Keesling's cross. I am covering Mr. Keesling's cross at this point.

The Court: In what respect?

Mr. Patten: Mr. Keesling was testifying at some length that there was only one place in that book where an [2054] expense check could be charged.

The Court: The Court will sustain an objection. Are you objecting, Mr. Keesling?

Mr. Keesling: Yes, I object.

Q. (By Mr. Patten): You testified under objection by Mr. Brody that in your opinion Mr. Forster did not conceal the existence of the Daisy or the Alpine Ice Cream Company from you, is that correct? A. That is correct.

Q. You testified in your examination from—by Mr. Keesling—that Mr. Erickson furnished you a substantial amount of information regarding certain adjustments to the books—

A. (Interposing) He—

Q. (Continuing) —mentioning, I believe—

A. (Interposing) He furnished these items on accounts payable of Issaquah Creamery Company.

Q. Did you discuss the books and records of the Alpine Dairy Company or the Issaquah Creamery Company with Mr. Forster?

What records they had, and what records they kept?

A. I don't recall ever discussing that with Mr. Forster. [2055]

Q. You did make inquiry then as to what records these companies had?

(Testimony of Gerald E. Gorans.)

A. That is correct.

Q. And from whom—and to whom did you direct your inquiry?

A. We talked to Mr. Erickson about the records at Issaquah; we talked to Mrs. Wilcox about the records at Alpine Dairy; and to the various people at each one of these places as to the records they had and kept.

Q. Did Mr. Erickson furnish you, the first time you asked him, all the information you requested, concerning the Daisy Ice Cream Company or the Alpine Ice Cream Company?

Mr. Keesling: If the Court please, will he state at the time he requested, the time he requested?

A. The first time we ever asked anything about Alpine Ice Cream, we were given the general ledger and cash disbursement book for the company for the periods starting in May 1949.

Q. (By Mr. Patten): When was the first time, if you recall, that you discussed this matter with Mr. Erickson? A. Which matter?

Q. The Daisy Ice Cream Company or the Alpine Ice Cream Company? [2056]

A. Well, the Alpine Ice Cream Company, the corporation or the proprietorship?

Q. The proprietorship, which preceded the corporation.

A. Sometime around November of 1950.

Q. Did he furnish you all the information you requested?

(Testimony of Gerald E. Gorans.)

A. I don't remember too much as to what we asked him about as to what he had.

Q. Did he give you a straight answer to all your questions?

A. It is a long time back. So far as I knew, he was giving me straightforward answers.

Q. He was not in any way evasive?

A. I don't recall his being evasive.

Q. You don't recall his being evasive?

Mr. Patten: I ask that this document be marked as Government exhibit next in order.

The Clerk: Plaintiff's Exhibit No. 282 marked for identification.

(Plaintiff's Exhibit No. 282 marked for identification.)

Q. (By Mr. Patten): Mr. Gorans, do you recognize your signature on this document?

A. Yes, I do. [2057]

Mr. Patten: I would like to offer, as Exhibit 282 in evidence, for the purpose of impeachment.

(Whereupon, there was a brief pause.)

Mr. Griffin: I am sorry. This is a seven-page document I have never seen before.

The Court: Have you any other matters?

Mr. Griffin: It is a very unusual manner of offering a document to impeach somebody. No foundation laid.

Mr. Patten: Perhaps I can proceed with another matter.

The Court: If you wish, you may look at that over the noon hour, Mr. Griffin.

(Testimony of Gerald E. Gorans.)

Mr. Griffin: He can proceed, and I will listen, while I read.

Q. (By Mr. Patten): You have testified that the books and records of Issaquah Creamery and of Alpine Dairy were inadequate, I believe, sir?

A. Yes.

Q. If business receipts had been put in the company bank account and entered in the places provided in these books for them, they would have been adequate to report those receipts, would they not? A. To report those receipts, yes. [2058]

Mr. Patten: Exhibit 279, please, sir?

(Whereupon, document was handed to Mr. Patten by the Clerk, and handed to the witness by Mr. Patten.)

Q. (By Mr. Patten): Mr. Gorans, we are handing you Exhibit 279 and calling your attention particularly to the fourth page thereof, which is a computation of identified items of unreported income of Mr. Hans Forster for the calendar year of 1947.

Calling your attention to the first item in the additional column, \$2,685.00, identified on this exhibit as salary from Renton Ice and Ice Cream Company.

Mr. Brody: I will object to this as improper recross.

The Court: It would appear not to be covered by redirect. I take it you may be referring in some respects to Mr. Cox's examination.

Mr. Patten: Both. I just wanted him to explain

(Testimony of Gerald E. Gorans.)

how the inadequacy of the books accounted for the failure of these items reported.

Mr. Keesling: That brings us to the point brought up, that these weren't testified to on the original direct, and that Mr. Cox merely asked if he did not testify to these items. [2059]

Mr. Cox: That is correct.

The Court: He is going into the inadequacy of the direct.

Mr. Patten: On Mr. Brody's redirect, he elaborated on the inadequacy of the books as accounting for the unreporting of income.

The Court: And this question is being asked to meet that question?

Mr. Patten: Yes, sir.

The Court: Well, you might put the question.

Mr. Patten: I shan't belabor it.

Q. (By Mr. Patten): Sir, the first item under the additional column is Renton Ice and Ice Cream, \$2,685. Will you explain to us how the inadequacy of the books accounted for the failure of that item to be reported?

Mr. Brody: Will you specify what book, books of Issaquah or Alpine?

Mr. Patten: Any books of which he has any knowledge.

A. Well, it is not customary for a person to record salary he receives in a book. It is reported on a W-2. A W-2 is part of the records furnished by a company, and apparently he was not furnished a [2060] W-2 for these salaries.

(Testimony of Gerald E. Gorans.)

Q. (By Mr. Patten): And the same would apply for the next item, \$100?

A. That is correct.

Q. Now, the next item is checks payable to Issaquah, deposited in Washington State Bank, savings account 198, \$20,563.32.

That would be referring to the books of Issaquah Creamery.

In what respect do the inadequacies of the books account for the failure to report this item?

A. Apparently on the testimony that has come in, it gets down to the inadequacy in that provision wasn't made for recording sales slips, or preparing sales slips for these particular items covered by many of these receipts.

Q. Do you know that sales slips were not prepared for these items?

A. Well, I don't know that they weren't prepared for every one of them, nor do I know that they were prepared for every one of them.

Q. And if a sales slip had been prepared and properly entered under the system of accounting in vogue, they would have been reported? [2061]

A. From my understanding of the testimony that has come in so far, they would have been.

Mr. Patten: I shan't belabor that.

Q. (By Mr. Patten): Now, referring to Mr. Holtberg's testimony, and exhibits 278, 279 and 280, isn't it a fact, Mr. Gorans, that the major portion of your testimony has related to adjustments to in-

(Testimony of Gerald E. Gorans.)

come in addition to those appearing on the exhibits which I have mentioned?

A. I believe so.

Q. Mr. Gorans, when you or your firm audit a business, audit the returns of a business, or an individual, and find that the returns are in error, what do you usually do?

Mr. Griffin: If the Court please, I presume that is preliminary to something. It is certainly not recross on any——

The Court: (Interposing) Yes, I——

Mr. Griffin: (Interposing) If it is something that is material, I have got no objection.

The Court: Is it a preliminary question?

Mr. Patten: Yes, sir.

I think it will be clear.

Q. (By Mr. Patten continuing): What do you usually do, sir? [2062]

A. Well, I am not sure I understand the question.

Q. In the ordinary course of business, you or your firm audit the returns of a business, or of an individual, and you find there are errors in those returns. What do you usually do, or what can you do?

A. Well, it depends considerably upon the nature of the errors.

Q. Among other things you can do is file amended returns? A. That is correct.

Q. That was not done here? A. No.

Q. Now, Mr. Gorans, have you ever been fur-

(Testimony of Gerald E. Gorans.)

nished with what are known as the civil figures in this case?

A. Verbally. They were read to me at one time.

Q. Do you recall what year that was, sir?

A. I think it was in the summer of 1951.

Q. Yes, sir; that was a conference in this building, was it not, between you and members of your firm, Mr. Kachlein, and the Agent's, was it not, sir?

A. I think I was the only one from our firm that was present.

Q. Now, you have testified, and then explained why you have not arrived at precise—at a precise determination [2063] of the income of Mr. Forster, or of the Issaquah Creamery Company for the years covered by the Indictment, have you not?

A. That I have not made an exact——

Q. Yes. A. That is correct.

Q. That is correct; had your audit progressed to the point to enable you to determine whether or not there was an understatement of income and tax liability during these years? A. Yes.

Mr. Keesling: I object as not recross.

Mr. Griffin: It is a conceded fact.

Mr. Keesling: And going clear afield.

Mr. Patten: They went into it.

The Court: There was some examination on that. I think, if the redirect was to meet the cross-examination, it seems we are extending it unduly, Mr. Patten.

Mr. Patten: Well, this is my last point, sir.

The Court: Sustain the objection.

(Testimony of Gerald E. Gorans.)

Mr. Patten: That is all; your Honor ruled.

Mr. Griffin: I object to this Exhibit 282 for the purpose stated, utterly incompetent, irrelevant and immaterial. [2064]

The Court: Well, I don't believe there is a foundation laid for impeachment, if that is the purpose of it.

Mr. Patten: I would lay the foundation, sir.

(Whereupon, document was handed to the court.)

Mr. Patten: I will not press the exhibit, sir.

Mr. Griffin: Are you withdrawing it?

The Court: There was an objection made, and the Court made one comment on it. What are you doing now?

Mr. Patten: I would like to lay the basis.

The Court: In other words, you withdraw the offer at this time?

Mr. Patten: Yes, sir.

The Court: Is that right? And you wish to proceed with another question?

Mr. Patten: Yes, sir.

Q. (By Mr. Patten): Mr. Gorans, I ask if you were present in room 1004-A in this building at two o'clock in the afternoon on February 27, 1951?

A. Yes, I was.

Q. And present were, besides yourself was, Mr. Marx, Mr. Eppler, and Pauline D. Frasier? [2065]

A. That is correct.

Q. A stenographic reporter.

I ask you if, on that occasion, you were not asked

(Testimony of Gerald E. Gorans.)

this question, and if you did not give this answer:

“When you questioned Mr. Erickson about the Dairy Ice Cream Company, did he make straightforward answers?”

“I couldn’t make much sense out of his answers. I had to actually dig in the records before I could determine what had actually happened.”

Mr. Griffin: Objected to as incompetent, irrelevant, and immaterial, and in no wise impeaching, and no foundation laid.

Mr. Keesling: I join in the objection.

Mr. Patten: I am proving an inconsistent statement at another time, your Honor.

Mr. Keesling: He said he couldn’t make any sense out of it.

Mr. Patten: I will proceed, sir.

Mr. Griffin: Not until the Court rules on my objection.

The Court: Is this particular issue involved here; it is a collateral issue, is it not?

Mr. Griffin: It is a collateral issue, entirely.

Mr. Patten: I am attempting to show that the witness [2066] answered differently.

The Court: I understand that. The question here seems to me to be a collateral issue entirely.

Mr. Patten: No, sir; it is the issue of cooperation.

The Court: With this witness?

Mr. Patten: Yes, sir. Mr. Keesling attempted to develop the point on recross that this—that Mr. Erickson furnished him information willingly and

(Testimony of Gerald E. Gorans.)

then they brought—and then Mr. Brody went in——

Mr. Keesling: (Interposing) My question was limited to three items.

The Court: The Court will sustain the objection; not that the matter was not brought up, but with this witness, it is a collateral issue to the examination on issues involved.

Mr. Patten: It goes also to the credibility of the witness, your Honor.

The Court: Of course, that is true of any impeaching question, is it not?

Mr. Patten: Yes, sir.

The Court: I will hear further from you, if you wish.

Mr. Patten: I won't urge it.

The Court: Is there anyone that wishes to be heard further? [2067]

The Court now is inclined to sustain the objection. The Court would hear you further in the absence of the Jury.

Mr. Patten: I have no desire to prolong this.

The Court: Does that conclude it?

(Whereupon, the Attorneys conferred at the respective counsel tables.)

Mr. Patten: I have been overruled, your Honor.

The Court: In other words, you wish to be heard, is that right?

Mr. Patten: On both sides, yes, sir.

The Court: Is there any further examination? Is there any further examination?

(Testimony of Gerald E. Gorans.)

Mr. Patten: That concludes it.

The Court: That is the only issue and you want to be heard on this?

Mr. Patten: Yes, sir.

The Court: Is there any further examination on the matters covered? Mr. Cox?

Mr. Cox: Yes, sir.

The Court: On that one issue, we will come back to that after we recess.

Mr. Cox: Should I proceed? [2068]

Recross Examination

Q. (By Mr. Cox): Mr. Gorans, you testified, I believe, to a computation that you had made as to the total amount expended by Alpine and Issaquah for clerical and bookkeeping expenses during the five-year period 1945 to 1949 and you gave a figure of \$295,000 and some odd dollars.

Mr. Brody: I will object as improper recross examination. That was on direct examination.

The Court: Yes, Mr. Cox, that went in before you undertook your examination, did it not?

Mr. Cox: I think the matter was perhaps gone into again by Mr. Keesling on his cross.

The Court: Only as to Mr. Erickson and Mr. Taylor.

Mr. Cox: Very well, your Honor.

The Court: Now, if you want to cover that in any respect, you may.

Mr. Cox: That point, I see.

Q. (By Mr. Cox): Mr. Gorans, I hand you

(Testimony of Gerald E. Gorans.)

Plaintiff's exhibits 2, 3, 4, 5 and 6, and the exhibits—which are the tax returns for Hans Forster for the years 1946, 1947, 1948 and 1949 and the return of Mrs. Forster for 1945, [2069] which contains the detailed information in Plaintiff's exhibits 10, 11, 12, 13—there must be one missing—

(Whereupon, there was a brief pause.)

Q. (Continuing) Which are the tax returns for these years for Issaquah Creamery Company. Is 14 there also? It may have gotten doubled in with another one. Do you have five corporate returns?

A. Yes.

Q. I wish you would take a piece of paper and pencil and total up the gross receipts of Alpine Dairy and Issaquah Creamery as reflected on those tax returns?

Mr. Brody: I will object as improper recross at this time.

The Court: I don't know; this is probably preliminary so far.

Mr. Cox: Yes, we are going again into the matter of relative compensation of Mr. Erickson and Mr. Taylor, and the total picture so far as these two concerns are involved, and we are entitled to show its relation to certain other factors in the case.

Mr. Brody: That was precisely the matter covered on our direct examination.

The Court: This covers nothing that was brought up subsequent to your direct examination?

Mr. Cox: Once the witness makes the calculation. [2070] if he is allowed to do that, we wish to

(Testimony of Gerald E. Gorans.)

go into the matters brought out by Mr. Keesling relative to the matters of compensation to Mr. Taylor and Mr. Erickson, which was after I completed my cross.

The Court: This covers Issaquah Creamery and——

Mr. Cox: (Interposing) Alpine Dairy.

The Court: (Continuing) ——Alpine Dairy.

Mr. Cox: For the years 1945 to 1949.

The Court: The Court will sustain the objection, Mr. Cox.

Mr. Cox: Very well, your Honor.

I will relieve you of them then.

(Whereupon, documents were handed to Mr. Cox by the witness.)

Q. (By Mr. Cox): Now, you did testify, did you not, Mr. Gorans, to the compensation paid to Mr. Erickson during this period, and then made a comparison between that compensation and the testimony you had previously given as to the compensation paid to Mr. Taylor during the Indictment period, did you not? A. That is correct.

Q. How much was Mr. Taylor paid in each of the years 1945, 1946, 1947, 1948 and 1949 for the work he [2071] did for Alpine Dairy and Issaquah Creamery?

Mr. Griffin: Objected to as not recross.

The Court: I think it has some relationship to the testimony given in response to Mr. Keesling's question. Insofar as it relates to that, it is overruled.

(Testimony of Gerald E. Gorans.)

Q. (By Mr. Cox continuing): Do you recall the question?

The Court: Compensation paid by Alpine and Issaquah to Mr. Taylor, is that the question?

Mr. Cox: Yes.

A. They paid in between the two of them \$100 a month.

Q. (By Mr. Cox): \$100 a month, or \$1200 a year? A. \$100 a month, or \$1200 a year.

Q. For each of the years here in question?

A. Yes.

Q. Now, from your investigation into the manner in which the books were kept at Issaquah and the way in which the office was run there, is it correct to say that Mr. Erickson simply worked in that office and did not have to maintain a separate establishment of his own?

Mr. Griffin: Objected to as not recross examination. [2072]

Mr. Keesling: I object to the form of the question, too.

Mr. Cox: It goes directly *the* matter of the comparison of the compensation of the two individuals concerned.

The Court: The Court will overrule the objection, except that I think it is a little——

Mr. Cox: (Interposing) ——involved?

The Court: (Continuing) ——vague.

Mr. Cox: All right, sir.

Q. (By Mr. Cox continuing): Mr. Erickson

(Testimony of Gerald E. Gorans.)

simply worked in the office at Issaquah so far as your investigation revealed?

A. That is right.

Q. Mr. Taylor, on the other hand, was a licensed public accountant who maintained an office in downtown Seattle, is that correct?

A. That is correct.

Q. And, of course, the maintenance of such an office, and the maintenance of a separate establishment for conducting his business entailed certain expenses for rent, salaries, postage, stationery, telephone, and other miscellaneous costs of running such a place, did they not?

A. I assume they would. [2073]

Q. These are expenses Mr. Taylor had——

Mr. Griffin: (Interposing) I move the answer be stricken as an assumption.

The Court: The assumption may be stricken.

Q. (By Mr. Cox continuing): So far as your investigation revealed, Mr. Gorans, isn't it correct that Mr. Erickson worked only in the Issaquah office?

A. That is correct.

Q. You didn't find anything in the records to indicate that he had any responsibilities for maintaining the books of Apex Farms?

A. No, he did not.

Q. Renton Ice and Ice Cream Company?

A. No, he did not.

Q. Finstad and Utgard? A. No.

Q. Simonson and Forster? A. No.

Q. Arctic Gardens? A. No.

(Testimony of Gerald E. Gorans.)

Q. Hub City Drug Company? A. No.

Q. He, therefore, never had occasion to travel to Conway, Washington, or to Puyallup, or to Renton, or [2074] to any of these other places in connection with the carrying on of bookkeeping or accounting duties in connection with those variously located concerns? A. No, he wouldn't.

The Court: Are you about through?

Mr. Cox: I am through with that line of questions, and was going to go on to a new one.

The Court: We will recess, then.

Ladies and Gentlemen of the Jury, we will take the mid-day recess, and the Court calls your attention to the admonition given on similar occasions, and asks that you heed that admonition on this occasion.

You may now be excused until 1:45. [2075]

* * * * *

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Cox.

Mr. Cox: Thank you, your Honor.

Q. (By Mr. Cox): Now, Mr. Gorans, again on cross-examination by Mr. Keesling, you testified that Mr. Erickson could have reconciled the cash account, for instance, with his own records, but

(Testimony of Gerald E. Gorans.)

that he couldn't have completed the job fully without having the information in the general ledger.

A. That is correct.

Q. Now, however, all he needs from the general ledger for the purpose of completing this process of reconciliation is the one figure representing the balance that the general ledger shows for cash?

A. No, he needs the debits and credits, on whatever entries are made in the general ledger also.

Q. That is, he is supposed to determine [2087] whether or not the actual cash he finds by reconciliation of his records being on hand is the same as the sum shown as the balance in the cash account, isn't that correct?

A. I don't understand the first part of that.

Q. Well, perhaps I can rephrase it.

Isn't the purpose of reconciliation to determine that the sum, the balance, reflected by the general ledger, is a correct reflection of the actual amount of cash on hand?

A. That is correct.

Q. And he can determine the actual amount of cash on hand at the close of business for any accounting period from his own records, can't he?

A. Well, he can count the cash.

Q. And, having done that, his only problem, if he is to complete the reconciliation is to compare this with the balance shown in the general ledger?

A. If it is in agreement, there is no problem.

Q. If there is disagreement, then he has to find out what adjustments were made?

A. That is correct.

(Testimony of Gerald E. Gorans.)

Q. But, in order to find out whether or not there is agreement, all he needs is the ultimate balance figure from the general ledger?

A. That is right. [2088]

Q. Didn't your investigation show that Mr. Erickson received in the office at Issaquah copies of these typewritten periodic statements that Mr. Taylor prepared?

A. There is no indication that Mr. Erickson received them.

Q. They were in the office?

A. No, I never found any in the office.

Q. You didn't see any there, you didn't find——

The Court: (Interposing) You are speaking now, when you say periodic records, of exhibit 31?

Mr. Cox: Yes, your Honor, the typewritten monthly, or in some cases I think the witness said they were not prepared every month, but the profit and loss statement, the balance sheets prepared from Mr. Forster's work papers.

Q. (By Mr. Cox continuing): Your investigation didn't reveal what the practice was once they had been prepared?

A. No, I don't know whether they went or—who received them, or whether they received them or not.

Q. Now, Mr. Keesling asked you regarding the inventory figures of Finstad and Utgard for the year 1946 to 1948 and you stated, for example, that in December 1946, the figure which was entered in the general ledger [2089] was ten thousand dollars

(Testimony of Gerald E. Gorans.)

less than that furnished by Mrs. Simonson; is that correct?

A. The typewritten figures furnished by her.

Q. Did you find anything in your investigation to indicate that Mrs. Simonson personally took the inventory at Finstad and Utgard?

A. The physical count?

Q. Yes.

A. No, nothing to indicate that she had.

Q. Did you find anything to indicate who did take the inventory? A. No.

Q. Then this figure which she typed on A-44, which is a group of her typewritten figures, must have been given to her by someone who actually did take the physical count, is that correct?

A. I think Mrs. Simonson testified that she did some of the pricing and ascertaining of the inventory.

Q. But the basic taking of the inventory would have been done by somebody else who went out in the plant to do it?

A. Well, Mr. Egeness was doing it in 1950, I know.

Q. So that, actually, the figure which she typed there was not one which she furnished in the sense of actually completely originating the figure herself, [2090] was it?

A. Well, she didn't originate the entire inventory document.

Q. In other words——

A. (Interposing) As I understand——

(Testimony of Gerald E. Gorans.)

Q. (Continuing) Someone else participated with her in the preparation of the inventory figures?

A. That is correct.

Q. And sometime after that figure was first developed and typed on this A-44, it was changed in pencil, is that correct? A. That is right.

Q. So far as you know of your own knowledge, it may have been reduced by Mr. Egeness, wouldn't that be true?

Mr. Keesling: If the Court please, I didn't hear that question.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. Well, the figure on here, according to her testimony, she gave it correctly to Mr. Taylor, so that I don't think Mr. Egeness on that basis could have reduced it. [2091]

Q. (By Mr. Cox): She gave this sheet to Mr. Taylor when he came to Conway?

A. That is right.

Q. Was there anything in her testimony which indicated to you that Mr. Taylor didn't confer at that time with Mr. Egeness?

Mr. Griffin: Objected to as not redirect examination.

The Court: Objection sustained.

Mr. Cox: Well, if the Court please——

The Court: (Interposing) Not on that ground. I think it is improper in form.

Mr. Cox: (Continuing) ——this matter was

(Testimony of Gerald E. Gorans.)

gone into again both on Mr. Keesling's cross and Mr. Brody's redirect.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

The Court: It is not a proper question, Mr. Cox. In other words, this witness isn't sitting in judgment to evaluate the testimony of——

Mr. Cox: (Interposing) Very well; I will withdraw the question.

Q. (By Mr. Cox): Mr. Gorans, is this another instance, as is [2092] true of some of the other alleged discrepancies that you pointed out, where you don't, in fact, know of your own knowledge why or in what way the adjustment was made?

A. No, I don't know.

Q. Now, again on Mr. Keesling's cross-examination, you stated it was ordinary practice to pay personal expenses of people connected with a business concern with company checks?

A. It is ordinary practice.

Q. However, the ordinary form as in the next step would be to, as you testified, in response to a question, I believe, by Mr. Patten, to charge this to a drawing account, to some kind of a loan account or receivable of some sort, which would reflect that this was either owed by the individual to whom it was paid to the business, or that it was to be offset against something he had coming from the business?

(Testimony of Gerald E. Gorans.)

A. It should be recorded as such in the general ledger.

Q. And it should not be recorded as a deductible business expense of the business concerned, whether it be a corporation or private enterprise?

A. Well, there again, the ultimate recording of it, it should not be included, but if there is an [2093] understanding that someone is going to review these expenses and take them out before preparing the income tax return, there is nothing wrong with charging them to expense under that circumstance when the tax return is prepared if they have been removed from the expenses.

Q. I would like an answer to my question, Mr. Gorans.

In other words, to be proper to issue the check, you have testified, that it should be charged to one of these other accounts, and, therefore, as a corollary, it is not proper, is it, at any stage, to charge it as a deductible business expense?

A. It is not proper to charge it to have the accounting records properly kept.

Q. All right.

A. I have seen many instances where they have charged those expenses and taken it out of expenses prior to preparation of the tax return.

Q. Now, you heard the testimony, haven't you, Mr. Gorans, as to the way in which adding machine tapes, such as Defendants' Exhibit A-16, were prepared at the end of each month to summarize the figures entered in the miscellaneous expense column

(Testimony of Gerald E. Gorans.)

in the cash disbursements maintained by Mr. Erickson at Issaquah? [2094]

A. That is correct.

Q. And that testimony was to the effect that these individual items of personal expense were thus included in total figures which were entered on this adding machine tape with a little number opposite them indicating the account to which they were to be charged?

A. There was a number on the tape.

Mr. Keesling: I have an objection. This is not recross examination.

The Court: What are you getting at here, Mr. Cox? What are you covering?

Mr. Cox: Well, Mr. Keesling elicited testimony that it is not how you charge these on the books, it is not that you write the checks that is bad, it is how they are taken care of in the final books of account, and I am trying to get this witness to admit to his knowledge as to the manner in which this was handled, and the way in which they got into the final books of account.

Q. (By Mr. Cox): Handing you what has been——

Mr. Keesling: (Interposing) If he confines it to my question, I have no objection.

Q. (By Mr. Cox continuing): Handing you what has been admitted [2095] in evidence as Defendants' Exhibit A-16, referring you to the second adding machine tape that is headed "Miscellaneous, Issaquah," isn't it? A. Yes.

(Testimony of Gerald E. Gorans.)

Q. And that has a series of figures down the—
dollar figures down the tape and on the left-hand
side is the name of an account, and on the right-
hand side is the number of an account, isn't that
correct? A. That is correct.

Q. One of these items is advertising with an ac-
count number, isn't it?

Mr. Keesling: At this point, I object again. He
is going beyond my cross-examination. I at no time
asked as to advertising, or any of the other num-
bers that appear on this page.

Mr. Cox: If Mr. Keesling had asked about spe-
cific items of expenses, I would be glad to confine
my cross-examination to them. He asked in general.
I will set it for any account he wants to name. I
want to find out how it was handled.

The Court: You want——

Mr. Cox: (Interposing) One for illustration,
one for illustrative purposes.

The Court: Yes. [2096]

Q. (By Mr. Cox): One of those items is ad-
vertising, isn't it? A. That is right.

Q. Now, if included in the figure there opposite
advertising was the amount of the check which had
been written——

Mr. Keesling: (Interposing) If the Court please,
I object to a hypothetical question at this point.

The Court: Well, I assume this is illustrative.

Mr. Cox: Yes, your Honor.

The Court: It must be more or less hypothetical
so the Court will overrule the objection.

(Testimony of Gerald E. Gorans.)

Q. (By Mr. Cox continuing): If included in that total dollar figure, was the amount of a check which had been written to pay a personal expenditure for someone connected with the business, it is impossible from the information contained on that adding machine tape to tell that that item is included, is it not? A. That is correct.

Q. And, therefore, if the figure for advertising which was entered in the advertising expense account in the general ledger there would have been no way, [2097] without going outside of this practice that has been testified to, to determine that that was not a proper entry to the ledger?

Mr. Griffin: I object to the form of the question.

The Court: Objection sustained.

Mr. Griffin: Practice testified to for two and one-half months here.

The Court: I sustained the objection.

Mr. Cox: I will rephrase my question, then, if the Court please.

The Court: The objectionable part is that portion where you say "as has been testified to."

Mr. Cox: Very well, your Honor.

Q. (By Mr. Cox): Isn't it true, Mr. Gorans, that since the expenditure which is of a personal nature, that we have supposed is included in this total, that fact as you have testified, can't be determined from the total itself and the information on the adding machine tape there is no reason for not entering this figure in the general ledger unless you have information aside from the adding machine tape

(Testimony of Gerald E. Gorans.)

which tells you that there is something improper there; wouldn't that be true?

A. Well, if you go to the basis of the adding [2098] machine tape alone, there is nothing on that to indicate whether or not there is personal expenditures included in these figures.

Q. And those were the figures that were entered in the general ledger, is that true?

A. I assume that they are the figures entered in the general ledger, but they come from a subsidiary record, which has got all the information in it as to what makes up these individual items.

Q. Now, handing you Defendants' Exhibit A-34, which has been identified as Mrs. Wilcox's re-cap for Alpine Dairy for October, 1949, and directing your attention to the small—the somewhat smaller sheet—the first sheet in that group of papers, that is a summary of the figures on the balance of the exhibit which Mrs. Wilcox prepared and which is in the form of a balancing equation more or less? In other words, the entry she has in this column when totalled equals the total of the entry on the right, is that right?

A. That is right.

Mr. Brody: I will object to this line as outside of the recross.

Mr. Cox: I am getting to the matter of the "paid-in", "paid-out" item that Mr. Brody went into on his redirect. [2099]

Mr. Keesling: May I suggest that the Examiner stand here?

(Testimony of Gerald E. Gorans.)

Mr. Cox: It is a little difficult.

The Court: Ordinarily, we will. If it is necessary to point out matters on the exhibit, he may approach the witness, if he desires.

Q. (By Mr. Cox): Now, in your investigation of the way in which the records were handled, and the information was passed on to Mr. Taylor, didn't you discover that this first sheet with these balancing columns was used as a summation of everything else in the exhibit?

A. It does not include the deposits, nor does it include the paid-in and paid-out.

Q. But it includes all of the revenues coming in and all of the other figures which enter into the items she has there of cash receipts, retail sales, cash wholesale sales, charge wholesale sales, and wholesale and retail collections and miscellaneous expenses and discounts and then this large general offsetting figure outstanding; those items are all brought forward and compiled on that one sheet, isn't that true?

A. In talking about income, it takes into account the normal income items that result in sales, but it does not take into account the unusual items that [2100] went into this paid-in.

Q. I would like to have you answer my question, Mr. Gorans, if you would.

In other words, this reported the ultimate in the report that went to Mr. Taylor, doesn't it?

A. I don't know what you mean by "the ultimate".

(Testimony of Gerald E. Gorans.)

Q. That is, everything else brought together has been checked out and approved by the computation made on that sheet?

A. Except that the statement here for bank deposits and the regular cash receipts are not included in this statement at all.

Q. Didn't you find, Mr. Gorans, that the entry for bank deposits at Alpine Dairy was taken from the cash disbursement journal maintained by Mr. Erickson at Issaquah?

A. No, it was not taken from the cash disbursement journal. It was taken from a bank statement.

Q. But I mean it was taken by Mr. Erickson from a bank statement, but entered in his cash disbursement journal? A. Yes.

Q. And Mr. Taylor took the figure from the column "Bank", and the column "Cash", in the cash disbursements journal? [2101]

A. That is correct.

Q. So he didn't resign upon this report for the item of bank deposits, did he?

A. He didn't use this report to get the figure for bank deposits.

Q. He got the bank deposits from another source, didn't he? A. That is right.

Q. And the items in this report that he was using were summarized for him in this first page of the exhibit?

A. Well, Mrs. Wilcox prepared a summary covering the first two pages in here, but she did not prepare any summary covering the third page. The

(Testimony of Gerald E. Gorans.)

third page was turned over to Mr. Taylor, and the third page shows that there was more money deposited than what appears on here.

Q. But, as we have already been over, Mr. Gorans, he was not looking here for figures as to deposits, was he?

A. He was looking to these figures for receipts of the company.

Q. She gave him a figure for cash receipts which was entered in connection with an office sheet to the sales figures which he took from this? [2102]

A. She prepared a summary. Whether or not this summary was prepared by her to be used by him to record the figure in the general ledger, I don't know. He used these figures in most instances to make his entries in the general ledger, but there are other figures furnished by her that she would have no control of after she gave it to him.

Q. It was your testimony, wasn't it, Mr. Gorans, as to these items and again with exceptions where you pointed out specific differences, that Mr. Taylor in the one or two page section of the ledger devoted to a journal actually journalized those items, didn't he?

A. Yes.

Q. And entered them in the ledger?

A. Yes.

Q. Now, on the last sheet of the exhibit, Defendants' Exhibit A-34, which is entitled "Office Sheet", there is another column marked "Cash"—

Mr. Cox: Strike that.

(Testimony of Gerald E. Gorans.)

Q. (By Mr. Cox continuing): The first column on the left is headed "Cash", isn't it?

A. That is correct.

Q. And then there are three other columns and [2103] the fifth column over is also headed "Cash"?

A. That is correct.

Q. And the total for that figure in this instance initially \$83,000 from which \$17,000 has been subtracted to obtain the figure of some sixty-odd thousand dollars? A. That is correct.

Q. Now, that figure in and of itself wasn't entered anywhere in the ledger either, was it?

A. No, it was carried forward onto this summary.

Q. It was carried forward by Mrs. Wilcox and entered into her final figure for cash receipts, is that correct? A. Yes.

Q. However,——

The Court: (Interposing) When you refer to this summary, you are referring to another sheet on that same exhibit?

The Witness: Yes.

Mr. Cox: As it comes from the last page and carried over to a total on what is the second sheet of the exhibit.

Q. (By Mr. Cox continuing): Is it your testimony that the difference between paid-ins and paid-outs did not in any [2104] way get carried forward into any of the other figures on any of these reports of Mrs. Wilcox?

Mr. Keesling: May I ask that that question be

(Testimony of Gerald E. Gorans.)

made more specific? He didn't say "carried forward to all reports submitted by Mrs. Wilcox".

Q. (By Mr. Cox continuing): My question is whether or not it was in this report or any report like it carried forward and used in any other total figure of Mrs. Wilcox?

A. I don't see where it is necessary to carry forward unless there is a breakdown of the paid-in and the paid-out items.

Q. Will you answer the question, Mr. Gorans? Is it carried forward?

A. Into any of the other summaries?

Q. Yes, any other figures?

A. You mean the paid-in here?

Q. Well, as I take it, you are only concerned with the actual differences, isn't it, between paid-ins and paid-outs?

A. Well, some of the items represent income and some of them represent expenses.

Q. Well, put it this way:

Is the total of the paid-in and the total of [2105] the paid-out carried forward to any other figure?

A. No.

Q. It doesn't go into any other figure in the report?

A. Not on these sheets, no, it doesn't.

Q. Now, in this instance, Mr. Gorans, on the last page of the exhibit labelled "Office Sheet", Mrs. Wilcox originally obtained a figure of some \$329,000, didn't she?

A. Yes.

Q. And she subtracted from that an item of \$17,000?

(Testimony of Gerald E. Gorans.)

A. I don't know who subtracted the figure, because these two are not in the same handwriting.

Q. It is not in the handwriting of Mr. Taylor, is it? A. I don't believe it is.

Q. Well, someone, presumably in the office at Alpine, subtracted \$17,000 from \$329,000 and got a net figure of \$311,000 for cash receipts?

A. That is what appears on here.

Q. And that is the figure that was entered in the general ledger? A. That is correct.

Q. Now, the figure that is subtracted has [2106] opposite on the left-hand margin "less War Department" and some abbreviations referring to Carnation, Kristoferson and Arden? A. Right.

Q. In other words, this was one of the adjustments on account of this large four-part contract?

A. It covers that particular thing.

Q. And the fact that that was taken out of cash receipts on this may have contributed to the development of the negative cash figure that you testified to that existed on the general ledger at the end of this month; is that correct?

A. I think I testified to the fact that this is probably the reason why.

Q. The origin?

A. Of that negative cash balance.

Q. Now, Mr. Brody went back over a number of things that I covered with you yesterday and asked you whether you found any explanation. Would it be fair to say, Mr. Gorans, that neither before nor after my examination have you found

(Testimony of Gerald E. Gorans.)

any satisfactory explanation for these specific differences that you pointed out between Mrs. Wilcox's figures and the final figures in the ledger?

A. I think that is correct. [2107]

Q. You couldn't find them beforehand and nothing in my cross-examination elucidated the matter?

A. No, it did not.

Q. Now, isn't it also true that you testified that this is simply testimony, on your part to—to inability to find this explanation which may be due to the lack of posting data, and the completion of certain details in the adjustments, rather than to testimony on your part that you now know definitely that no adjustment should have been made?

Mr. Brody: I object to that as argumentative, your Honor.

The Court: Objection overruled.

A. Well, there still doesn't appear, in my estimation, to be any justification for changing the figures. There is nothing in the records to indicate why they should be changed.

Q. (By Mr. Cox): You do not now, beginning in 1950 and continuing to 1954, find any reason for the adjustment, do you?

A. I think I testified that I thought that this \$17,000 accounted for why the—there is a negative cash balance in the general ledger, and that it was adjusted in 1950, after we started our work.

Q. As to the items, however, of accounts receivable, [2108] wholesale sales, cash collections or ac-

(Testimony of Gerald E. Gorans.)

counts receivable, and the other items which Mr. Brody went over with you on redirect, your testimony is that starting at a later point, and working back into the books, you have not found an explanation for these adjustments? A. No.

Q. But, is it your testimony, working from the point where you started, that there was in fact no basis for any adjustments?

A. I have never been able to find one.

Q. Is it your testimony that there may not have been a basis for adjustment which was made at that time?

A. I have pointed out where the differences existed.

Q. Yes, we have been over that several times, Mr. Gorans.

A. And whether or not there is any reason why the difference existed.

Q. But, either of your own knowledge, or based on anything you have discovered in your investigation, are you here able to tell the Jury that there was, in fact, no reason to make adjustment to the various accounts with respect to the various items you have testified to? [2109]

A. I think I have already said I could find no reason for it.

Q. You have said that several times. I am asking you whether you are able to testify that there may not have been a reason for such an adjustment?

A. There might have been a reason for it.

Q. Now, I believe you testified, Mr. Gorans, that

(Testimony of Gerald E. Gorans.)

the books and records which you found in this investigation were not adequate for Mr. Forster's enterprises?

A. Well, they could not have been adequate or you wouldn't find these differences in existence.

Q. Will you just answer the question, Mr. Gorans? You testified, didn't you, that they were not adequate? A. Yes.

Q. Now, did you intend to limit that testimony to the ledger operations like Issaquah Creamery and Alpine Dairy, or do you think that is equally true of the smaller ones like Finstad and Utgard and Renton Ice Cream and Puyallup Creamery?

A. I think back to some of the things that we found in those records when we first started working on them and we immediately changed them so that we would get information that would give us the correct results. [2110]

Q. Did you find, as a broad, general sweeping generalization, such as you have made here, that the system of books and records at Finstad and Utgard was inadequate for the purpose of that business?

A. I don't recall any big change that was made in those records for that company.

Q. Well, now, how about Renton Ice and Ice Cream Company, was the system that existed there generally adequate to reflect income and expenses to be charged against income?

A. That one was fairly well—the records here——

Q. How about Simonson and Forster?

(Testimony of Gerald E. Gorans.)

A. It seems to me on Simonson and Forster there was something on accounts receivable that——

(Whereupon, there was a brief pause.)

Q. Was that some specific mistake you found or some underlying inadequacy?

A. It was the underlying way in which the records were kept.

Q. They were kept there differently, were they, than at the other two corporations?

A. Yes, they did not have the same system.

Q. I believe in Mr. Brody's examination that he asked you about some other records that were needed. [2111]

Isn't it correct that the only completely separate record that you suggested was the maintenance of a general journal?

A. I think that is the only one I suggested at the time.

Q. Isn't it——

A. (Interposing): Yes, that is the only one I could think of at the moment.

Q. Isn't it true of any of these books that they had a place to record receipts from sales?

A. That is right.

Q. And they had a place to charge expenses paid out for the purchase of materials for the operation of their trucks and for the maintenance of office and plant and for the payment of payrolls and all the other normal expenses of the business?

A. Well, they had one record for recording most of the disbursements in, and they had a separate

(Testimony of Gerald E. Gorans.)

payroll record on—for Alpine Dairy and Issaquah Creamery Company.

Q. Isn't it true, really, Mr. Gorans, that the trouble was not so much with the adequacy or inadequacy of the books and records as a system, but with the way in which material was entered or not entered in them? [2112]

A. Well, I think it gets down to part of it lies with the way in which the information was entered in the records and the lack of general supervision over the records.

Q. If the information had been properly entered in the records with or without supervision, the books and records would have been sufficient to reflect all the income of these enterprises and all the expenses of the enterprises?

A. They could have all been placed in there.

Q. I believe you testified also on Mr. Brody's redirect examination that as to the subsidiary records that the ones that you checked were correct?

A. May I have that question again?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

Mr. Keesling: If the Court please, what does he mean by the "subsidiary records"?

Mr. Cox: I don't know, the witness testified.

The Witness: I don't think I testified to—I said, so far as the subsidiary records were concerned, I did not find anything wrong, but I said to go back at this time and try and find whether we are cor-

(Testimony of Gerald E. Gorans.)

rect at this time would be an impossible thing to undertake. [2113]

Mr. Griffin: I think the witness is referring to an exhibit.

Mr. Cox: A-34?

The Witness: A-34.

Q. (By Mr. Cox): I believe Mr. Brody asked, and you answered the question which stated that you found nothing to indicate that they were incorrect? A. On these particular—

Q. (Interposing): That the subsidiary records—

The Witness: The subsidiary records?

Q. (Continuing): —or all these reports were incorrect? A. I didn't cover all of them.

Q. No, but your testimony was to the ones you checked with respect to the specific differences.

A. With respect to the specific differences that I testified on and that was limited to Alpine Dairy—

Q. Well, let's take Alpine. Is that there, Mr. Gorans? You testified to certain differences between the figures included in the reports that Mrs. Wilcox prepared and the figures that were entered in the ledger and you were then asked whether or not, so far as your investigation revealed, the subsidiary reports and documents [2114] were correct?

A. And I think that I said that I did not find any indication that they were not correct.

Q. Yes; now, you, however, I think indicated a

(Testimony of Gerald E. Gorans.)

moment ago that you actually didn't make any check as to that?

A. No, there was probably over one thousand documents that were used in preparing this information.

Q. That is the point I want to bring out. You didn't go back, Mr. Gorans, did you, and trace through for the month of October, 1949, the way these figures got on the report from the drivers' tally sheets and from the cashier records or from the other subsidiary documents which must exist before and support this?

A. No, I did not go back on those.

Mr. Cox: That is all.

Mr. Keesling: I have no questions.

Mr. Brody: Just one or two questions.

Redirect Examination

Q. (By Mr. Brody): If all the information in a subsidiary set of records is correctly entered, thereon, will you then have an accurate set of books if that information is not then accurately transferred to the general ledger?

A. Well, the subsidiary records could be [2115] completely accurate. Unless from there they are put into the general ledger in accurate and proper form, the records, the final record, would not be accurate.

Q. And what is the final and authoritative book of account in any system of accounting?

Mr. Moriarty: Objected to as repetitious.

(Testimony of Gerald E. Gorans.)

The Court: Didn't you cover that before?

Mr. Brody: I believe so. It just comes up in connection with this matter.

The Court: The Court will sustain the objection.

Q. (By Mr. Brody): Now, so far as your examination of summary records of Alpine Dairy, to which you have testified, is concerned, you haven't any reason to believe that those records do not correctly reflect the transactions of Alpine Dairy for the periods which they represent?

Mr. Cox: Objected to as repetitious.

The Court: Objection sustained.

(Whereupon, there was a brief pause.)

Q. (By Mr. Brody): Do you have Exhibit 16 there, Mr. Gorans? A. 16?

Q. I think it is this tape. [2116]

Mr. Griffin: A-16.

Q. (By Mr. Brody continuing): Now, showing you Exhibit A-16, consisting of certain tapes, and a slip headed "Inventory", would the transfer of the totals from the tape into a book of account necessarily require accounting skill?

Mr. Moriarty: Objected to as not proper redirect.

Mr. Brody: Well, it is a subject gone into by Mr. Cox as to the transfer.

The Court: Objection overruled.

A. Well, when the—everything is sufficiently marked, there isn't any skill involved in transcribing that, to another set of records.

(Testimony of Gerald E. Gorans.)

Q. (By Mr. Brody): Would it be possible for a clerk to do that work? A. Yes.

Q. And, so far as the keeping of a general ledger is concerned, is it consummate with the responsibility of keeping the general ledger to transfer figures from a tape like A-16 directly without further inquiry?

Mr. Cox: Object to the form of the question.

Mr. Moriarty: Improper redirect.

Mr. Cox: Improper redirect, no basis laid for the expression of any opinion.

The Court: Well, the form of the question may be objectionable. Sustained on that ground.

Q. (By Mr. Brody continuing): In transferring information from a tape such as Exhibit A-16 into a general ledger, does the general ledger accountant have any responsibility to examine the items contained on the tapes?

Mr. Cox: Object to the responsibility from which the witness testified he is unable to answer.

Mr. Keesling: He is an expert witness.

Mr. Cox: Expert on the responsibility?

The Court: If he can answer, he may. Objection overruled.

A. Well, I would say that he had responsibility to make sure that the information contained on these tapes was proper, and that it was properly charged to the respective expense accounts as shown here.

Q. (By Mr. Brody): And would there be any responsibility on the part of the person transfer-

(Testimony of Gerald E. Gorans.)

ring information from a summary like Defendants' Exhibit A-16 to a general ledger—would there be any responsibility in that person for the accounting [2118] systems which produced the information contained in A-16?

Mr. Moriarty: This is outside the scope of expert opinion, if your Honor please, and certainly not proper redirect.

The Court: The Court will sustain objection to this question.

(Whereupon, there was a brief pause.)

Q. (By Mr. Brody continuing): In your testimony, Mr. Gorans, concerning—in the respect to the——

Mr. Keesling (Interposing): Louder, please.

Q. (By Mr. Brody continuing): In response to Mr. Cox's questions concerning the charging of personal expense, such as the expense for advertising, which was specifically mentioned, in transferring the figure on the tape on an exhibit like A-16 to the general ledger, does the accountant who makes the transfer have any responsibility to determine the nature of the figure which he is entering in his general ledger?

Mr. Cox: Objection.

Mr. Moriarty: Same objection.

The Court: Now, what do you mean "responsibility"? What are you getting to, Mr. Brody?

Mr. Brody: Well, Mr. Cox has a simple point which he is trying to make, and that is that a tape with summary figures reveals only summary figures

(Testimony of Gerald E. Gorans.)

and classifications, perhaps titles and numbers which are indicative of those classifications, and he would like to have us believe that an accountant who keeps the general ledger simply takes those tapes from a bookkeeper and enters them in a general ledger and that is accounting.

I want to ask Mr. Gorans, who is an experienced accountant and an expert, if an accountant—who keeps the general ledger and goes out to a place of business and is given a tape like this and sees summary figures—if he has any further responsibility?

It seems to me to go right to the heart of a very serious issue in this case, and one that cannot be skimmed over by simply comparing figures on a tape with a ledger which cannot be taken out of the case by technical objection as to whether this witness can express an opinion as to what accountants are supposed to do in the exercise of their profession.

Mr. Moriarty: He isn't qualified as the keeper of the general conscience, either.

The Court: This question is to be determined by the Jury, Mr. Brody, I take it. [2120]

Mr. Brody: Unless a professional accountant can give his opinion as to what these responsibilities are, and certainly Mr. Cox is entitled to bring accountants in who will testify to that matter, if we can have no testimony as to standards of care, the Jury will be uninformed as to whether or not there

(Testimony of Gerald E. Gorans.)

is a breach of that standard care. It is only by showing the standard in Court——

The Court (Interposing): This witness, when you asked before on redirect, was unable to give a standard that would be applicable to the situation; isn't that correct?

Mr. Moriarty: And he also added, if your Honor please——

The Court (Interposing): Aren't you getting back to that question.

Mr. Moriarty: And he also said that the responsibility depends on the agreement between client and accountant. This is calling for his general conscience research on the subject of "What is my duty?"

Mr. Griffin: Let the record now show, at this point, that the Government is doing its best to sustain Mr. Taylor's accounting.

Mr. Cox: The record will show what Mr. Moriarty said. [2121]

Mr. Moriarty: We stand on the record.

The Court: Just a moment.

Mr. Brody: Let us simply ask this witness if he has an opinion on the matter of this responsibility.

Mr. Cox: Is it a qualified opinion?

The Court: Well, the question asked before when you were asking questions on redirect before was as to certain standards that he was aware of. As an expert, he presumably might be able to testify to some matter of standard or custom in his profession.

(Testimony of Gerald E. Gorans.)

Now, whether that may be applicable to this situation is another question, but, first of all, he would have to —

Mr. Brody: (Interposing) Well, I have planned this in that direction.

The Court: (Continuing) —ask for his knowledge of the standards, if there be any, and that was the question we didn't make any progress with earlier.

Mr. Le Sourd: If your Honor please, we have been over that thing earlier, and the witness stated there was no standard applicable to accountants.

The Court: That is my recollection.

Mr. Moriarty: It would be his personal opinion of his conscience.

The Court: The Court will sustain the objection. [2122]

Q. (By Mr. Brody): Now, if as a matter of fact, on a tape such as A-16, if personal items are included as expenses, should that fact appear in the accounting record?

Mr. Moriarty: Are you referring to A-18?

Mr. Brody: 16.

Q. (By Mr. Brody continuing): I am asking if that fact should be—entry should be made apparent in the accounting records?

A. Personal expenses should be made apparent.

Q. Should the fact that they are personal expenditures—

A. (Interposing) That should be made apparent some place.

(Testimony of Gerald E. Gorans.)

Q. And should that at some place be taken out of the company records?

A. They shouldn't be taken out of company records.

Q. How should they be——

A. (Interposing) It is just a matter of how they are recorded in the end. You might say the end product of the records.

Q. And what steps should be taken to prevent their being charged as a company expense?

Mr. Moriarty: Objected to as not proper [2123] redirect.

Mr. Brody: This is precisely the matter that Mr. Cox went into.

Mr. Moriarty: You are going around to circumvent the Court's ruling.

Mr. Griffin: May I suggest, if the Court please, that Mr. Cox examined this specifically as to A-16 and used the advertising figure on it.

The Court: I recall.

Mr. Griffin: And that is what we are going into specifically.

The Court: I will overrule the objection.

Mr. Brody: Will the reporter read the question?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. Well, if the item has been recorded or paid by company check and recorded, then it is someone's responsibility to review these disbursements

(Testimony of Gerald E. Gorans.)

to see that they are properly recorded in the check register.

Q. (By Mr. Brody): And where a general ledger is kept, whose responsibility is that?

Mr. Moriarty: Same objection, if your Honor please. [2124]

Mr. Cox: Same objection.

The Court: It seems to me that the witness has stated "someone's responsibility." It seems before he can state whose responsibility, it seems that we get right back to the other question, and I will sustain the objection.

Mr. Brody: May I ask a preliminary question?

Q. (By Mr. Brody): In a situation where you have subsidiary books of account and a general ledger, with specific reference to the manner of charging items of expense, is there a standard or public accounting rule as to who is ultimately responsible for the proper charging of those elements of expense?

Is there such a rule?

Mr. Cox: Object to the question as repetitious.

Mr. Brody: If the answer is affirmative, we have a basis.

Mr. Cox: If the answer is affirmative, he knows now and didn't know this morning.

The Court: That is a matter for the Jury. The Court will permit the answer to this question.

A. I think there is a general rule. There is no—to my knowledge, there is no law or legal approach to the subject. [2125]

(Testimony of Gerald E. Gorans.)

Q. (By Mr. Brody): What is the general rule?

Mr. Cox: First, where does the general rule come from?

The Witness: I think you can find it in textbooks on accounting.

Q. (By Mr. Brody): In other words, is the general rule a usage or custom of the accounting profession?

Mr. Moriarty: I object to basing answers on hearsay.

Mr. Brody: As an expert.

The Court: He is being asked the question as a certified public accountant as to practices or standards of accountancy, and if he knows, he may answer.

A. Well, my experience has been whoever the person that is responsible for the general ledger is the person responsible for seeing the items are properly recorded in the general ledger, no matter how far back down the line in subsidiary records he has to go.

Mr. Brody: No further questions.

Mr. Keesling: No questions, your Honor, if there are none further from other counsel.

Mr. Cox: We have no questions.

Mr. Moriarty: We will reserve the matter [2126] discussed with the Court.

The Court: Yes, this one question.

Mr. Patten: Aside from that, we have no further questions, your Honor.

Mr. Keesling: I will wait until he is finished.

(Testimony of Gerald E. Gorans.)

Mr. Cox: You have no questions at this point on anything covered by Mr. Brody?

Mr. Keesling: I have no questions.

The Court: Now, your examination is as to the matters covered by Mr. Brody?

Mr. Cox: That is right, your Honor.

Recross Examination

Q. (By Mr. Cox): Mr. Gorans, you testified that an accountant has the responsibility for determining the correctness of figures posted from subsidiary records to the general ledger?

A. That is the only way he can know the figures he is using are correct.

Q. Just answer the question.

He has the responsibility for determining they are correct?

A. That is right.

Q. Determination involves some affirmative act; he is going to have to go out and ask somebody or look [2127] at the records?

A. That is right.

Q. Is it your contention that it is the responsibility of the person keeping the general ledger to conduct a detailed audit every month to determine every figure given to him which he has no reason to believe is false?

A. Conduct a detailed audit?

Usually the person who keeps a general ledger will design the subsidiary records and instruct the people keeping them so that the information he gets

(Testimony of Gerald E. Gorans.)

comes in in the proper order. If he has any question or doubt in his mind as to whether or not it is coming in in a proper order, then he should go——

Q. (Interposing) If he has any doubt; how does a doubt arise from a figure “advertising, so many dollars” on a tape given him? What is it that creates a doubt in his mind to determine that that figure is correct?

A. Well, the figure in itself would not necessarily cause him to have any doubts.

Q. What does? He has a figure that says, “Advertising, so many dollars, account for such and such,” does the figure advertising or reference to the account number, create a doubt?

A. No. [2128]

Q. What creates the doubt that gives rise to the responsibility to determine that this is a correct figure?

A. Well, so far as these particular things are concerned, the only thing that I have seen that would give rise to doubt is the way he was recording accounts receivable for Alpine Dairy, and there is no amount on that for this particular tape.

Q. Mr. Gorans, if you please, I fail to see the connection between accounts receivable of Alpine Dairy and Issaquah Creamery.

Mr. Griffin: If the Court please, what counsel sees is immaterial. Let’s have the question.

Mr. Cox: I had a question.

The Court: The last question has not been answered.

(Testimony of Gerald E. Gorans.)

Mr. Cox: It has not been answered.

The Court: Mr. Reporter, read the question.

(Whereupon, the following question was read by the reporter.)

“What creates the doubt that gives rise to the responsibility to determine that this is a correct figure?”

The Court: Is that answer in the record? I believe it is.

(Whereupon, the following answer was read by the [2129] reporter:)

“Well, so far as these particular things are concerned, the only thing that I have seen that would give rise to doubt is the way he was recording accounts receivable for Alpine Dairy, and there is no amount on that for this particular tape.”

The Court: Let's have the next comment or question from Mr. Cox.

(Whereupon, the following question was read by the reporter.)

“Mr. Gorans, if you please, I fail to see the connection between accounts receivable of Alpine Dairy and Issaquah Creamery.”

Mr. Cox: It is a question to which there has not been a direct answer. I would like to have it.

The Court: This one you start with now?

Mr. Cox: The question which I asked to which he started to answer, and I made my comment.

The Court: That is the answer you wish read? We will read the answer.

Mr. Cox: No, I wish him now to give an answer

(Testimony of Gerald E. Gorans.)
to the question.

Mr. Griffin: He answered it. If you want it read, all right.

The Court: Mr. Reporter, read the answer.

(Whereupon, the following answer was read by the reporter.)

"Well, so far as these particular things are concerned, the only thing that I have seen that would give rise to doubt is the way he was recording accounts receivable for Alpine Dairy, and there is no amount on that for this particular tape."

Mr. Cox: I will rephrase the question.

Q. (By Mr. Cox): Mr. Gorans, confining your answer to the item of advertising on A-16, what is there to create a doubt which gives rise to a responsibility to determine that that figure is correct?

Mr. Griffin: I submit that that is repetitious and object to it. He answered it prior to the last question.

Mr. Keesling: I object to it because when he put the question on advertising before, I objected then and it is purely hypothetical. Now, he is trying to pin him down to a previous hypothetical question.

The Court: Objection overruled.

Q. (By Mr. Cox continuing): Will you answer the question?

A. I think I answered it before, that the [2131] particular figure for advertising shown on here, there is nothing in \$315.35 that would cause you to have any question.

(Testimony of Gerald E. Gorans.)

Q. I understood you, Mr. Gorans, in response to a question by Mr. Brody to say that there was a responsibility on the man who kept the general ledger who got a tape of this kind to determine that the figure is a correct one; isn't that true?

A. That is correct.

Q. And then, on my cross-examination, you say that having set up the system and instructed the people on how to enter these things, he must check this if something comes up to arouse his suspicions, isn't that correct?

Mr. Griffin: I object to the form of the question. It is argumentative and has been covered.

The Court: Objection sustained.

Mr. Cox: If the Court please, if he testifies to one thing on examination for Mr. Forster and something else to my cross-examination, I don't think he can retreat to the position he had formerly taken with Mr. Brody.

The Court: I think you have covered it back and forth. I think the Jury can determine from the answers given and reach a conclusion. [2132]

Mr. Moriarty: Mr. Cox, it is time for recess.

The Court: Do you have some more questions?

Mr. Cox: I have some more questions.

The Court: Ladies and Gentlemen of the Jury: We will now take the mid-afternoon recess.

The Court calls your attention to the admonition given on similar occasions and asks that you heed that admonition on this occasion.

You may now be excused.

(Testimony of Gerald E. Gorans.)

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, at 2:48 o'clock p.m. a recess was had in the within-entitled and numbered cause until 3:03 o'clock p.m. March 24, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the Courtroom.)

The Court: You may be seated.

It is stipulated that the July and all Defendants are present in the courtroom? Mr. Griffin? Mr. Moriarty?

Mr. Griffin: Yes, your Honor. [2133]

Mr. Moriarty: Yes, your Honor.

The Court: Please proceed, Mr. Cox.

Q. (By Mr. Cox): I believe, Mr. Gorans, your concluding statement under Mr. Brody's examination as to the responsibility of the man maintaining the general ledger was that he is responsible for the correctness of these entries, no matter how far back he may have to go to determine that they are correct? A. That is correct.

Q. When you start looking back behind the figures given you in connection with the keeping of the books, you are on the way to an audit?

A. Not necessarily.

Q. Isn't an audit the matter of checking supporting detail?

(Testimony of Gerald E. Gorans.)

A. That is one of the terms for auditing, reviewing something someone else has looked at, but generally, an audit is thought of today as an independent verification of the assets and liabilities outside of all of those as much as possible to do.

Q. Something quite independent from any verification of the accuracy of the books themselves?

A. I am not sure I can answer that question.

Q. Well, let me put it this way, Mr. Gorans: Wasn't [2134] it part of the purpose of the audit conducted by Touche, Niven, Bailey, and Smart, for which your firm has been paid, according to the testimony, seventy thousand dollars, to determine whether or not entries were accurately made in the books?

A. No, our audit was to determine what the assets and liabilities of Mr. Forster's companies were as of May 31, 1950.

Q. And how did you get to the point of finding out there were, you say, discrepancies between certain reports received from Alpine Dairy, and the way they were entered in the ledger if your only concern was to determine net worth as of that date?

A. That is all it was at that time.

Q. You could have determined net worth by a determination simply of his then-existing assets and then existing liabilities?

A. You could determine his net worth as of that date, yes.

Q. But you have—the entire basis of your testimony is that you, in the course of this investiga-

(Testimony of Gerald E. Gorans.)

tion—you went through the books maintained in all these enterprises extensively, didn't you?

A. Well, one thing we had to go through them extensively to determine what fixed assets there were. The [2135] other thing, we went through them quite extensively when we started working with Mr. Marx to determine some way of breaking down this increase in net worth by year for the various companies.

Q. All right, now suppose, for the sake of argument, that there exists on the man who maintains the general ledger a responsibility for tracking down this figure on advertising for which he has no apparent reason to have suspicion.

Isn't it true that his first step would be to go back and look at the detail in the journal, the cash disbursement journal, of which exhibit 264 is an example, to find what made up that figure on advertising? A. That is right.

Q. And then, when he goes back to the journal, he finds in a column listed "Miscellaneous," several hundred figures, some of which have opposite "Account 23" for advertising?

A. That is correct.

Q. Now, it is not enough that he now segregates all these items with the No. 23 opposite them and totals them and determines that they come up to the figure that is on the adding machine tape; he now has to inspect those items individually, doesn't he, to find out, according to [2136] your standard

(Testimony of Gerald E. Gorans.)

of responsibility, whether any one of those by mistake might have been a personal expenditure?

A. Well, he could very easily do that by just looking at the checks that had been written during the year, or during the month; he wouldn't have to take and sort these things out and find out which ones are advertising, and then go back and try and locate it at that time.

Q. Of course, if he just looked at the cancelled checks, can he, Mr. Gorans, be sure which ones were charged to advertising?

A. The position in the cash disbursements——

Q. (Interposing) In the journal, that is where we were. Looking at the column "Miscellaneous" and we find ten items with No. 23; now, he has to go further, and he has determined that total \$310 or whatever the figure is, he has to look at each of those ten items in the journal to determine to whom the payment was made?

A. If he is going to find out—break down—look at each item, yes.

Q. All right; and when he looks there in the journal what he finds is the name of the payee, a date and the amount, isn't it?

A. That is right.

Q. He doesn't find any statement of what the purpose [2137] of the expenditure was, does he?

A. No.

Q. And, I believe that you heard the testimony of Mr. Eppler, didn't you, that any one of these expenditures could have been a proper business ex-

(Testimony of Gerald E. Gorans.)

penditure so far as the name of the payee alone is concerned?

A. Some of them would be very unusual business expenditures.

Q. All right; let's suppose he is still suspicious, although you have given us no reason for his initial suspicion that led him back of the figure for advertising, and he undertakes to determine what these payments were made for.

Now, how does he go about that?

A. Looking at the invoices.

Q. All right; and he looks first, does he, in the business files of invoices?

A. Well, he would—I don't know where they would be.

Q. Would they be filed according to advertising, or is he going to have to look at all the invoices until he finds an invoice in this amount and naming the payee of this check?

A. I think in this instance they are filed by vendor. [2138]

Q. All right. So, if he found a check here made payable to the Washington Athletic Club, and he wishes to find out whether that is a proper advertising expense, he looks in the invoices under Washington Athletic Club? A. Right.

Q. In your investigations, Mr. Gorans, did you find that the supporting invoices for all these checks which were issued in payment for personal expenses were maintained in the business records of Issaquah Creamery and Alpine Dairy?

(Testimony of Gerald E. Gorans.)

A. We found there were a lot of invoices received back in the early years that were not available in 1950.

Q. Did you find instances in which the invoices for the personal expenditures were in the business records of Issaquah Creamery and Alpine then?

A. I think there was one of them brought into evidence here from the Washington Athletic Club.

Q. And that was in the records maintained in the office at Issaquah?

A. I believe that it was.

Q. Now, actually, of course, the man who wrote the check in the first place had the invoice in front of him so that he knew whom to make it payable to, and in what amount, didn't he? [2139]

A. Yes.

Mr. Moriarty: Did you answer?

Mr. Cox: Yes.

The Witness: Yes.

Q. (By Mr. Cox): And he even knew the reason for the payment as it appeared from the invoice or could have inquired as to the purpose; is that correct?

Mr. Keesling: If the Court please, I object to the hypothetical situation. It is mere speculation.

This witness has no way of knowing.

The Court: It seems the objection is well taken.

Mr. Cox: I will rephrase the question, if the Court please.

Q. (By Mr. Cox continuing): Normally, the invoice would also state on it the material supplied,

(Testimony of Gerald E. Gorans.)

or the service furnished for which the charge is made, would it not?

A. Generally, it would.

Q. Now, do I understand your testimony to be that in this picture of affixing responsibility, there is no responsibility on the man who writes the check to see that it is properly entered in the journal in a [2140] way which reflects the purpose of the expenditure?

A. Well, he is responsible to the person who he is furnishing the information to.

Q. He does have some responsibility then about seeing that this is properly entered and charged?

A. I don't know about that.

He has responsibility to the person supervising him.

Q. And would a part of that responsibility be to not put the figure 23 opposite miscellaneous items in the column that were not advertising?

A. I don't think I understand the question.

Q. Put it the other way:

His obligation is to properly enter in the miscellaneous column in the journal the account number to which this item of expenditure should be charged? A. If he knows it.

Q. If he knows it, all right; and it would be a breach of that responsibility if he entered it in another account, wouldn't it?

A. It wouldn't be fulfilling the responsibility.

Q. Is there a difference between that and of a breach of responsibility? [2141]

(Testimony of Gerald E. Gorans.)

Mr. Griffin: I submit, if the Court please, that these questions are entirely argumentative.

The Court: I will sustain objection to the last question.

Q. (By Mr. Cox): I take it, Mr. Gorans, that in your standard of responsibility, the responsibility for checking these figures, even though nothing has arisen to create suspicion in your mind, and to go back so far in the records as it may be necessary to find out what the purpose of this was, exists and is imposed on the person who maintained the general ledger quite separate and apart from what he may be paid for his services, or from what his understanding with his employer may be as to the understanding of his services?

A. If he takes on the responsibility for keeping the general ledger, then I would say he has responsibility. If his remuneration is not adequate, then he can talk to the person who employed him for it.

So far as the terms of responsibility, whether you can take on a general ledger with a limited responsibility, I don't know. In my opinion, you can't.

Q. You don't know whether you can take on the responsibility of a general ledger without going into all of this, is that now your testimony? [2142]

A. Well, my opinion is you can't.

Q. Well——

A. (Interposing): Maybe Mr. Taylor thought he could.

Q. This, then, is a matter of your individual

(Testimony of Gerald E. Gorans.)

personal opinion, Mr. Gorans, as to the extent of the responsibility of the man who keeps the ledger?

A. I think I testified to that a long time ago.

Q. What was your testimony?

A. The fact that in my personal opinion the man who kept the general ledger was responsible to make sure that the information coming from subsidiary records was given to him properly, and if not, he was to correct the records so that he could record them in the general ledger.

Q. Is that a responsibility founded in law?

Mr. Moriarty: I object to it as not proper recross.

The Court: Objection sustained.

Q. (By Mr. Cox): Have you ever discussed the existence or extent of such a responsibility with other accountants?

Mr. Moriarty: Same objection.

A. I——

The Court: Objection overruled. [2143]

A. (Continuing): I have.

Q. (By Mr. Cox): Outside your office?

A. I can't think offhand of any time of particularly discussing that element with other accountants right now, but I probably have.

Q. Well, then, this testimony of yours as to the existence and degree of this responsibility is your personal opinion, confirmed by conversation with members of your firm?

A. Also what I have learned from studying accounting, and what is in textbooks.

(Testimony of Gerald E. Gorans.)

Mr. Cox: That is all.

Recross Examination

Q. (By Mr. Keesling): Mr. Gorans, relative to the checks that Mr. Cox has been speaking of during the Indictment period, there was no voucher system on the checks issued, is that correct? They didn't have check-vouchers? A. No.

Mr. Moriarty: Objected to as improper cross examination. He is down to about the sixth phase.

Mr. Keesling: My questioning is strictly to going behind the records to determine from the checks what was on them. [2144]

Mr. Moriarty: What has that got to do with vouchers? There was no testimony to vouchers.

Mr. Keesling: Well, my point——

The Court (Interposing): I take it, Mr. Keesling, you are covering matters referred to by Mr. Cox in the last examination?

Mr. Keesling: Yes.

The Court: The Court will overrule the objection.

Q. (By Mr. Keesling): If there had been a voucher system, the voucher attached to the check would have stated what the check had been issued for, would it not? Is that the essence of a voucher system?

A. Well, I don't think that is the essence of a voucher system. There is generally a remittance advice attached to a check, and on that remittance advice, the accounting distribution is generally noted.

(Testimony of Gerald E. Gorans.)

Q. My point is that they did not have a system going back to the particular check and looking at the face of it that you could tell from the face of the check exactly what the check had been issued for?

A. No, you could not.

Q. You could on the check stub, I assume?

A. I only looked at a few of those check stubs, and [2145] on many of those, there is no indication what the check was issued for.

Q. But, if the supervising accountant had a voucher system, then he could easily go back and find out the remittance advice just referring to those, could he not, without referring to the invoice?

Mr. Moriarty: Object to the form of the question and renew my objection.

The Court: Objection overruled.

A. I think the voucher generally is attached to the invoice, and the voucher and the invoice are filed together.

Q. (By Mr. Keesling): My point is, if there had been a voucher system established, then through that voucher system the keeper of the general ledger could easily refer to the voucher to get the information behind the totals, to get the information in the subsidiary records as to these checks?

A. He still has to go back and look at the voucher itself.

Q. That is my point; he looks at the voucher?

A. But the voucher is attached to the invoice. The remittance advice attached to the check goes with the check and there is usually instructions on

(Testimony of Gerald E. Gorans.)

it that [2146] that be torn off, before the check is cashed.

Some companies keep copies of checks in which the entire check and remittance advice shows on it, but even on that remittance advice, the general rule is not to elaborate on what was covered by the invoice that that check might be in payment of. It is used purely as a reference so that the person receiving the check knows what the check is in payment of, and at the same time, it provides for accounting distribution for internal accounting purposes by the company issuing the check.

Q. At Issaquah and Alpine, they didn't have either the remittance or voucher system to give that information to the keeper of the general ledger; that had not been set up?

A. No, there was no voucher system in existence.

Mr. Keesling: No further questions.

Redirect Examination

Q. (By Mr. Brody): I want to show you, Mr. Gorans, Plaintiff's Exhibit 231 which is a check to Dr. Hillary.

Mr. Cox: The number?

Mr. Griffin: 231.

Mr. Brody: 231.

Q. (By Mr. Brody continuing): Would a review of that check alone without regard to any supporting invoice, the check bearing the name of Betty and Jo Anne Forster arouse the suspicion of an

(Testimony of Gerald E. Gorans.)

accountant, if the check had been charged to a business expense?

A. Well, if he saw the check, it would.

Q. Yes; the question is, looking at the check, would that arouse his suspicion?

A. I think it would.

Mr. Brody: That is all.

Mr. Cox: No further questions.

Mr. Keesling: No further questions.

Mr. Patten: One further.

Recross Examination

Q. (By Mr. Patten): This remittance advice you described, would that contain a statement as to whether an expenditure is for personal or business purposes, ordinarily?

A. Well, generally, they wouldn't put the words "business" or "personal"; that purpose wouldn't be on there. That would show up in the account distribution.

Q. It would show an account distribution, and there was a system of account distribution in effect, wasn't there? A. Well——

Q. (Interposing): At Issaquah? [2148]

A. (Continuing): Well, they use some form of distribution.

Mr. Patten: That is all.

Mr. Cox: That is all.

Mr. Keesling: May we ask that the witness be held under subpoena subject to call? We will call him on our case in chief.

(Testimony of Gerald E. Gorans.)

The Court: Is he under subpoena?

Mr. Griffin: He has been under Government subpoena. He will be here.

The Court: I take it he then is under subpoena?

Mr. Moriarty: He was released, I think, in February.

Mr. Keesling: If they haven't subpoenaed him, we will subpoena him.

Mr. Griffin: He will be here if he lives.

Mr. Brody: Mr. Alkire? * * * * * [2149]

HANS FORSTER

upon being called as a witness for and on behalf of the Defendant Forster, and upon being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Griffin): Will you state your name, please? A. Hans Forster.

Q. And you are the defendant in this action?

A. I am.

Q. And so there may be no mistake about it, are you the Hans Forster that owns a Cadillac automobile? A. That is right.

Q. And what is the model of that Cadillac automobile? A. 1950 Sedan.

Q. Now, Mr. Forster, how old are you?

A. I was 50 on the fourth of March.

Q. March of this year? A. Yes.

Q. And where were you born?

A. I was born in Switzerland.

(Testimony of Hans Forster.)

Q. And whereabouts?

A. In Neuwilen Canton Thurgau.

Q. Now, will you also try to keep your voice [2390] up? A. All right, sir.

Q. In what sort of a family were you born, what was your father's business or occupation?

A. We had a farm and a combination milk route and dairy pick-up from Producers.

Q. Did you go to school?

A. Yes, I had six years of grade school and three years of Junior High.

Q. And did you work while you were going to school?

A. Yes, I worked on the farm.

Q. Doing what?

A. Well, milked cows, and as I got a little older, got up to eleven or twelve years old, I started to haul milk from the farmers.

Q. Hauling milk, you say? A. Yes.

Q. Was that by a Cadillac?

A. No, we had horses, and during the war years, we had to use oxen to haul the milk.

Q. Now, after you completed your—or had your three years—by the way, did you have any study or instruction in bookkeeping?

A. No. Teaching in Switzerland on mathematics, [2391] I would say, was 75 or 80 percent of it to try and memorize it, to do the figuring through the head.

Q. Multiplication tables?

A. That is right.

(Testimony of Hans Forster.)

Q. When you completed your three years in Junior High School, why didn't you go on to school, or what did you do then?

A. Well, I graduated from Junior High in the spring of 1919, and I was confirmed on Good Friday, 1919, and after that, I had to help my dad on the farm.

Q. Did your schooling—what did your schooling consist of in your major—what did they teach you in school, mainly?

A. Well, we had arithmetic and we had to take some language, at least one—I took French, and some Italian—and history, some cameo—what you call chemistry—and a little bit of physics.

Q. Where—did you take English?

A. No, I couldn't speak a word of English when I came to this country.

Q. And how long did you continue to work for your father?

A. I was fifteen when I was confirmed, and I stayed with my dad from 1919 until I think it was in the spring of 1921, pretty near two years. [2392]

Q. You have used the term twice, "confirmed". What does that mean?

A. Well, I was confirmed in the Lutheran Church.

Q. In the Lutheran Church?

A. During high school education, part of our instructions is in the church, too.

Q. Did you do any work of any kind before you

(Testimony of Hans Forster.)

came to the United States, other than dairying; that is, milking cows and hauling milk?

A. No, in 1921 I went as an apprentice Swiss cheesemaker, to Riedt in Canton Thurgau, to learn cheesemaking trade.

Q. And what was the purpose of that?

A. Well, so I can know how to make cheese first, of course.

Q. By the way, how large a herd did your father have on the farm?

A. Oh, we had a fairly small herd over here, ten and twelve cows; and over there, that is a fairly large herd.

Q. Now, how long were you apprenticed to this cheesemaker? A. For two years.

Q. And were you under the supervision of any particular man? [2393]

A. Yes, I was under the supervision of Mr. Ruegger, who was the owner of the cheese factory.

Q. That is Ruegger, R-u-e-g-g-e-r (spelling)?

A. R-u-e-g-g-e-r (spelling), yes.

Q. And did you learn the making of Swiss cheese?

A. That is right; after two years, I got my diploma, and I was a Swiss cheesemaker.

Q. How large a factory was this in which you worked?

A. We made one tillsitter, two big wheels a day, and about four or five hundred pounds a day of tillsitter. We had a combination, of course. All the cheese factories there have hogs at the factory and

(Testimony of Hans Forster.)

we fed probably around 200 pigs, and I had to take care of around 50 sows that we got the pigs from.

Q. And what—did you have any particular duties in this little cheese factory?

A. Yes.

Q. What were they, in addition to learning the trade?

A. Well, of course, just like I said, first thing in the morning, we had to feed the pigs, and we had to receive the milk from the producers, and then we went on to make the cheese in the morning and freeze it [2394] up, and in the afternoon we had to go and salt Swiss wheels and then in the evening, take the milk in again and feed the pigs.

Q. And by “wheels”, what do you mean by that, first? A. The big emmenthaler.

Q. The kind we used to get before Kraft took it all over?

A. Well, they are still bringing some in. They weigh around 200 pounds, 225 pounds, apiece.

Q. Now, in the work under your father, and in your work at the cheese—learning the cheesemaking business—did you have anything at all to do with any books or records or keeping them?

A. No. Of course, at home, I didn't. My Dad used to give me so much spending money period, and you didn't need any bookmaking for that. In the cheese factory, we had to weigh the milk, 100 pounds weight, and Joe Jones, or John Doe, had

(Testimony of Hans Forster.)

200 or 125, and we marked it on the sheet when we weighed. That is all our bookkeeping was.

At that time, we didn't run any butterfat for the milk. It was bought by 100 pound weight, and that was all there was to it.

Q. And did you have anything to do with any books [2395] other than a kind of account?

A. Just the receiving sheets of the milk.

Q. And did this diploma, the granting of your diploma, did that make you in Switzerland a journeyman cheesemaker?

A. That is right, cheesemaker.

Q. And did you have to take an examination for that?

A. Yes, we had to take both oral, and we had two master cheesemakers that came from four o'clock in the morning until nine o'clock at night, and stayed right with me while I went through the whole process, and then the whole thing is controlled by the Government as part of being a Swiss cheesemaker.

You have got to pass on it, otherwise the Government is not going to buy your cheese.

Q. Having received your diploma, did you then take employment anywhere?

A. Yes, I went to Hatswill as a Swiss cheesemaker.

Q. In what year was that?

A. It was in the middle of 1922.

Q. And in what sort of work did you then do

(Testimony of Hans Forster.)

until you came to the United States, which I will reach a little later? [2396]

A. While I was apprenticed in Riedt to Mr. Ruegger, I met two good fellows, brothers that came from Ketchikan, and that day they started to talk to me about this Country.

Q. No, you misunderstood my question, because I will come to it later.

A. All right.

Q. Between the time you got your diploma and became a journeyman cheesemaker——

A. (Interposing): Yes.

Q. (Continuing): ——and the time you came to the United States, what did you do, were you doing, just before you came to this Country?

A. That is all. I quit making cheese one day and then left for this Country the next day.

Q. Well, were you making——were you working for someone? A. Yes.

Q. After you got your diploma, and were making cheese——

A. (Interposing): That is right.

Q. (Continuing): ——how large a factory operation was that?

A. We was making four emmenthalers at that time. It was one of the biggest factories in that part of the [2397] Country.

Q. Did you have anything at all to do with books or records or bookkeeping or accounting in that factory?

A. Nothing at all. I had an apprentice that

(Testimony of Hans Forster.)

worked with me, and one fellow that used to take care of the pigs there from that time on so I didn't have anything to do with the pigs any more, and was in charge of making the cheese.

Mr. Griffin: It is recess time.

The Court: Ladies and Gentlemen of the Jury: We will now take the mid-morning recess. The Court calls your attention to the admonition given on similar occasions, and asks that you heed the admonition on this occasion.

You may now be excused.

(Whereupon, the Jury was retired from the courtroom.)

(Whereupon, at 11:02 o'clock a.m., a recess was had in the within-entitled and numbered cause until 11:17 o'clock a.m., March 26, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:) [2398]

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Griffin.

Q. (By Mr. Griffin): How many were there in your family, Mr. Forster?

(Testimony of Hans Forster.)

A. There was three of us. I was the youngest one of the three boys.

Q. And without any detail, in Switzerland, the younger boy has some disadvantage in the—so far as the eldest son is concerned?

A. Well, yes; I never felt too much that way about it because I left when I was quite young.

Q. And when you say you left, from where did you leave and where did you go?

A. During my apprentice days in Riedt, I met Ernest and Walter Andres, who were brothers of Mrs. Ruegger, and they had a little business in Ketchikan for about ten years, and they sold the milk business [2399] there and came out to Switzerland. Both were single, and they come out there to find themselves some wives, I guess, and so I met them while they stayed with the sister at the Cheese Factory, and they talked to me about this country, of course, and sometime later on, they intended to come to the United States again and at that time, before I got through my apprentice work, they asked me if they would come back again if I had any kind of an ambition to try to come over here, and I told them, "Well, when the time came along that they was to come back again and needed some help, I sure would consider it", and that is when I went there, and one of them finally left, and he went to Idaho and started a bunch of cheese factories there, and Walter stayed back, and he got married then, and that is the time I came over with Walter Andres, and I had to make the decision in

(Testimony of Hans Forster.)

just a few weeks' time that I didn't have any chance to go in the quota that Switzerland had for immigration to come to the United States.

So, Walter and I, him being an American citizen, we went to Canada, came to Canada, and I think we landed there on February 8, 1924, and we travelled to Canada and we stopped where Walter had a friend that was the head of the butter department of P. Burns and Company at Calgary. [2400]

Q. Were they meat packers?

A. Meat packers and creamery operators. They have got cheese factories and butter plants all over Canada.

So, we went to the American Consulate in Calgary. They told us that it would take a certain length of time before I could go to the United States under the Swiss quota from Canada, and he said it might take five or six months, and he would advise me that the first thing is to try and see if I could find a job and try to learn the language, to go to school. I didn't know how to speak English, of course, so I felt kind of blue when my friend left, and he went to Idaho Falls with his brother to run the cheese factory at Idaho Falls, and Grantsburg. I guess they had four.

So, I stayed with this friend of Walter Andres, and him being the foreman, he got me this job at P. Burns and Company as a buttermaker's helper.

Of course, at that time of the year, it gets pretty cold up there in Canada, and there wasn't too much cream or milk coming in, so I did odd jobs.

(Testimony of Hans Forster.)

They had a lot of those to make the pasteurized cheese, and they made me go into the cooling rooms and clean up some of the wheels and certain odds and ends.

Q. And how old were you—I will put it [2401] directly: You were about nineteen?

A. Nineteen, yes.

Q. At that time, could you speak English?

A. No, I couldn't speak a word of English.

Q. And in Canada before you came to the United States and while you were working, did you go to night schools to study English?

A. Yes, and then I went to work, and I went to night school to learn the English.

Q. And when did you first enter the United States?

A. I came to the United States in the middle part of 1925, first as a visit for six months, and then I went back after six months and went to Vancouver, and got my—came in under the entry permit——

Q. (Interposing): Was it——

A. (Continuing): ——of the Swiss quota.

Q. (Continuing): Was it 1925 or 1924?

A. It was in 1925.

Q. It was in 1925? A. Yes.

Q. And at that time, when you first entered the United States on a temporary permit, where did you go?

A. I went to Idaho Falls, first, to my—to friends that owned the cheese factory. [2402]

(Testimony of Hans Forster.)

Q. And what was the name of this man that you went to there? A. Andres.

Q. A-n-d-r-e-s (spelling)?

A. That is right, yes.

Q. And was he a brother-in-law of this Mr. Ruegger under whom you had your apprenticeship in Switzerland?

A. Yes, there were two brothers, Ernest and Walter Andres, and when I got down there, they informed me that the week before I got there, that they sold—they sold the cheese factory to Kraft Cheese Company, so I worked a little while, probably two or three months, and then Ernest ran some ads in the Washington Farmer to try to build some cheese factories in the State of Washington, and he got a few answers to the ad, and he came over here to Washington from Idaho, and he made arrangements to build one of the cheese factories in Ferrydale near Kent, and another one at Falls City.

Q. When you left Switzerland, to come by way of Canada to the United States, did you have any money?

A. Yes, my Dad got me to take it, and he gave me ten thousand Francs along.

Q. And what was the value in those days of ten thousand Francs in American funds? [2403]

A. Oh, I would say around \$2500, or \$2200.

Q. And, coming first on this temporary permit, do I understand that you then went from Idaho Falls to Vancouver, British Columbia, and there waited until you could come in under the quota?

(Testimony of Hans Forster.)

A. No, I was in Idaho Falls, and then Andres was here, making contracts to build the two cheese factories, one in Falls City and one in Ferrydale, and he called me in Idaho and said, "You'd better come to Seattle, they are going to start to build the cheese factory, and you might as well start to get acquainted around here."

So, I came to Seattle during the same six months' period I had, and then I——

Q. (Interposing) And did you help them in the construction of the cheese factory?

A. That is right; I went to Falls City and I boarded with this man by the name of Fred Shortreed that built that factory for rental to Mr. Andres, and I helped him built the plant, and while I was—I milked cows for my room and board with Mr. Shortreed. He had a herd of cows.

Q. Do you recall about when that factory was opened?

A. It was opened on the first of May in 1926.

Q. And was that both factories opened, or the Falls City factory, or the one at Kent?

A. The one at Ferrydale opened before, but I was supposed to be the cheesemaker at the Falls City factory, so that is where I helped build it.

Q. And was it from Falls City that you went to Vancouver, British Columbia?

A. That is right, yes.

Q. And then you entered the United States from British Columbia on the then quota of Swiss immigrants?

A. That is right.

(Testimony of Hans Forster.)

Q. And did you then return after coming back from Vancouver?

Did you return to your work at the Falls City cheese factory?

A. That is right; I ran the cheese factory.

Q. How many people were employed in that cheese factory at that time?

A. Well, we had two vats and first, I had one man that helped me.

Q. Now, I want, if I may, because in my recollection I am off a year on these matters in continuity, I want you to stop and think for a moment to see if there is anything that you can base a recollection upon. I will take something and go back. I am interested [2405] in dates, when you arrived in the United States, and when this cheese factory was opened in Falls City.

I don't want you to miss this date.

What date were you married?

A. 22nd of August, 1926.

Q. All right; now, working back from that date, I want you to think about two dates:

One, when you first entered the United States, and then the date of the opening of this cheese factory.

A. Gosh, I couldn't tell you the exact date.

Q. Well, let's——

The Court: (Interposing) The question is the year, Mr. Griffin?

Mr. Griffin: I am interested in the year. Either

(Testimony of Hans Forster.)

he is off a year, or I am, on these matters, except his marriage.

The Witness: I remember that date.

Q. (By Mr. Griffin): Let's go back to the year that you left Switzerland to come and came to Canada.

A. I know that I landed at St. Johns February 8, 1924.

Q. You landed at St. Johns February 8, 1924?

A. Yes, sir. [2406]

Q. Right. Now, then, did you enter the United States the same year under a temporary permit?

A. Yes.

Q. So——

A. (Interposing) You have got it now.

Q. All right; so then you came to the United States in 1924, rather than 1925?

A. That is right.

Q. And the cheese factory was opened at, on May 1, 1925, rather than 1926?

A. That is right.

Q. Now—what was your work at the cheese factory in Falls City?

A. Well, making cheese.

Q. And what kind of cheese were you making?

A. Making American cheese. I had to learn, first. Mr. Fish from the State Department of Agriculture worked with me for a week or ten days, and then he helped me get familiarized with making American cheese, and American loaf.

(Testimony of Hans Forster.)

Q. The man who owned the factory was this Andres?

A. He was the owner of the factory, yes.

Q. Did he supervise your work at Falls City, or did he live some place else?

A. He lived in Kent. [2407]

Q. Did you have any helper in your——

A. (Interposing) I had one helper, yes.

Q. So the Falls City plant consisted of yourself and one helper, is that right?

A. That is right.

Q. What were your wages, if you recall?

A. I was making one hundred dollars a month.

Q. And to whom was the cheese product sold?

A. Well, we made Brookfield cheese for Swift and Company, and Cloverbloom for Armour and Company, and made some for T. B. Kloch and different packers in town here.

Q. Now, did you have anything at all to do with any books or records of that cheese factory at Falls City while you were making cheese?

A. Mr. Andres done the book work for both of the factories. We just kept a record of the receipts of the milk that came in on a 100 pound basis, and we took butterfat samples out of each individual shipment, and ran butterfat tests twice a month and the Babcock test, and took tests for the State Department of Agriculture. And every two weeks, I sent them the receiving sheet, where all the names of the producers was down and the numbers that was on the cans, and we ran the Babcock test and

(Testimony of Hans Forster.)

we sent them the butterfat tests [2408] with the weights down to Andres, and he would send the checks back up, or bring them up, and we would give them to the driver who picked up the milk, and he delivered the checks to the individual producers.

Q. And you got your check the same way, did you?

Q. Yes, I had to wait a few times, but got it.

Q. Did you have any proprietary interest in that cheese factory?

A. No, I didn't. I had about fifteen or sixteen hundred dollars left yet of what my father gave me, and Ernest Andres knew about it and when he first started out, it was a little rough for him to get going on the deal, and he wondered if I would loan it to him, and I told him, as far as I was concerned, I didn't need it and was glad to give it to him.

Q. And as of—coming down into around August—September of 1925, was that little factory operating successfully?

A. Well, yes; I thought it was. He never told me too much about it. We made—we made good cheese there, and he made the prices to the farmers, and he is the one that sold it, so we was getting along all right as far as I was concerned.

Q. On your manufacturing end? [2409]

A. Yes.

Q. And then how about the financial end as it developed?

A. Well, he started to get into financial trouble,

(Testimony of Hans Forster.)

and he called me down to his home one time and he told me he was unable to cover those checks that at that time I think he owed me probably four or five months' payroll checks of my own, and he owed some money to my helper, but he always told me that the money was slow coming from the packers, and he had an awful hard time to meet the farmers' payroll, until finally it came to a head and he called me up and he said that "It doesn't look like I am going to be able to keep on going," and I wanted to know then, as he owed me this money, and he said "If you can go ahead and pay the bills, or are willing to pay the producers the bills—I remember there was Seattle Box Company where we had boxes—and I would ask him how much it was. Of course, he wasn't able to tell me at that time, and he told me he would try and get the figures together, and I went up to Snoqualmie Bank, where he banked—Mr. Andres—and I told Mr. Peters about it, who was the manager of the Snoqualmie Bank at that time, and so we got the amount owing to the producers and the bills he had. He was willing to [2410] walk out if I took over the debts.

In fact, first he figured I should leave, myself, and I told him I didn't want to leave. I liked it pretty well there, and something could be worked out, and I would just as soon take a chance at it, because I figured I could always support myself on the deal, and without two different wages coming out of it, I could probably get along better than he did.

(Testimony of Hans Forster.)

So, we finally got the figures together, and he went up to the bank at Snoqualmie with me to see Mr. Peters, and we needed, I think, about three thousand dollars, besides what he owed me, to make the deal.

So, I wired my Dad and told him I had a chance to go into business myself, and wondered if he wanted to help me.

Mr. Peters sent the wire for me. A couple of days later, I got the money from my Dad.

Q. How much?

A. I think it was close to between twenty-five hundred and three thousand dollars.

Q. And with that, did you then become the owner of the Falls City cheese factory?

A. I became the owner of the equipment of the [2411] Falls City cheese factory. The building was owned by somebody else.

Q. And did he close the one at Kent?

A. Yes.

Q. And would this be sometime in the fall or late summer of 1925?

A. That is right.

Another thing that happened right off the bat, I got some difficulties after I made the deal. When he closed his plant, then, at Ferrydale, some of the farmers had some money coming, and they started to go ahead and give me trouble about it, and Mr. Peters helped me clear it up, but I owed Andres some money on the deal yet at that time, because he didn't have the equipment all paid and

(Testimony of Hans Forster.)

started to garnishee the amount Andres had coming.

Q. You were paying due to his deal up there?

A. I didn't have anything to do at Ferrydale, no.

Q. Were you represented by a lawyer in this deal with him?

A. No, Mr. Peters handled it all.

He was represented by Mr. Fred Wettrick, who handled Mr. Andres' affairs.

Q. You relied on the banker? [2412]

A. That is right.

Q. And did you have any accountant at that time? A. No.

Q. And did you eventually pay off these creditors of this man from whom you purchased?

A. That is right. I went to see all the different producers and some of those producers are still shippers to Darigold Farms, of course, now, and have been with me for close to thirty years.

Q. Now, then, in the fall or late summer or fall of 1925, then, you had borrowed this money from your father and had become the sole proprietor of this factory, is that right? A. Yes.

Q. And what date was it that you got married in 1926? A. 22nd of August.

Q. The 22nd of August, 1926?

Q. 22nd of August, 1926, and whom did you marry? A. Evelyn Totten.

Q. Where did you meet her? That is, was she from the Falls City community? [2413]

A. That is right.

Q. And then you continued to operate the plant

(Testimony of Hans Forster.)

and manufacture cheese, too? A. Yes.

Q. From the time you were married, down to—
and you were married August 22, 1926?

A. That is right.

Q. And you continued to manufacture cheese in
that plant down to what?

A. Until the factory burned down in December,
1926.

Q. And where did that leave you?

A. Well, it left me with a bunch of debts on my
hand, and a bunch of milk the farmers shipped, and
we lived at Snoqualmie and couldn't find a place
to live in Falls City, so when I came down at 4:30
in the morning, to start to get the cheese out of the
press the factory was burned down.

Q. Now, your wife's name prior to marriage
was Totten, was it? A. Yes.

Q. What was her father's business?

A. He was a farmer, and he had some trucks,
he was running the school busses for Falls City
schools, and he was hauling the milk to my plant
from the producers. [2414]

Q. Had Mrs. Forster ever been employed prior
to her marriage to you; I mean, except with her
own family work?

A. Well, she got graduated out of High School
in June, I guess, and we got married in August.

Q. Now, prior—you had met Mr. Peters at the
Snoqualmie Bank, wasn't it?

A. That is right.

Q. Prior to the destruction of the factory in

(Testimony of Hans Forster.)

this fire in December—and it was a complete loss, was it?

A. It was a complete loss, yes.

Q. Had you started maintaining a bank account?

A. Yes, I started maintaining a bank account when I took over the factory from Mr. Andres.

Q. And where did you maintain that account?

A. At Snoqualmie Bank.

Q. Did you have any formal books of account of any kind in your operation in those days?

A. Well, the Missus kept the “come in” and “pay out”.

Q. That is, the money that came in, and the money paid out? [2415]

A. That is right, for the farmers and farmers' checks.

Q. And what did the actual business of the factory consist of?

A. Well, buying the milk and buying the supplies to run it, and scales and boxes and coal for the boilers and selling the cheese.

Q. That was it? A. That is right.

Q. In those days, were you required to file any income tax returns, either for yourself or for Mrs. Forster? A. No, I don't think so.

Q. Now, I think you said, after the plant was destroyed by fire, you still—the thing you had left was some milk?

A. That is right. Of course, it just came overnight, and I didn't have any way to talk to the

(Testimony of Hans Forster.)

producers, so I talked to my father-in-law and he came down to pick up the empty cans that was there, and I told him he'd better tell the producers that I would try to find a home for the milk and to keep on shipping.

I intended somehow to try and keep on going, and either I would build—if somebody built a [2416] factory or I would try to get the milk some place else, so I made arrangements with the Issaquah Creamery at that time to try to take the milk, and got Mr. Nettleton out of bed, who ran the Issaquah Creamery at that time.

He used to buy my whey cream that I got off the whey and he said "For the time being, I think we can handle it." It was about ten thousand pounds of milk a day.

Q. So you took that to the Issaquah Creamery then?

A. I took that to the Issaquah Creamery then, yes.

Q. And who was operating the Issaquah Creamery at that time?

A. Clark Nettleton.

Q. Is that the Clark Nettleton who was then the publisher of the P-I?

A. That is right.

Q. And how did you support yourself and your wife after the factory burned down?

A. Well, we lived with our in-laws for over three months.

Q. Well, did you take any employment?

(Testimony of Hans Forster.)

A. Well, I was, of course, trying to see if [2417] I could rebuild the Falls City cheese factory, and I tried to interest some of the businessmen in Falls City, if they would build a plant and back me up, and then I went to see Mr. Hall, who testified the other day. The first time—I met him before—he used to stop in at the cheese factory and buy cheese once in a while, and I knew that an old condensory was at Tolt, where Mr. Hall was, so I went up to talk to him, to see if it could be used for a cheese factory, but it was so run down and dilapidated that we would be better off to build a new one.

But I couldn't find anybody that was willing to stake me to rebuild the cheese factory, so I talked to Mr. Nettleton and told him I still had this milk and maybe him and I could work out something, so I could manufacture cheese down there and so he said, "Well, maybe later on; maybe later on in the spring or summer."

"But, in the meantime," he said, "if you want a job to wash cans, there is a job open." So, we moved down to Issaquah, and I washed cans there, I would say for about six months, or maybe a year, until he told me if I could finance cheese equipment myself, that he would entertain the idea of me to put the cheese [2418] equipment into the creamery and make cheese for so much a pound. He would furnish the milk and pay the producers and pay me so much for making American cheese.

So, I got ahold of Mr. Perkins, who was the buyer at Falls City, and he was at that time man-

(Testimony of Hans Forster.)

ager for Creamery Package Manufacturing Company, who sold cheese and creamery equipment, and I told him I didn't have very much money, but had \$500 which I could put down and if he could trust me, could I get a good contract, and Mr. Perkins helped me make the contract with Clark Nettleton to start to make American Cheese at Issaquah Creamery at that time at so much a pound, and they guaranteed me a certain amount of milk every day if only I could make the payments to Creamery Package.

Q. So that with this \$500 then, you used it buying equipment, did you, on conditional sale?

A. That is right, yes.

Q. And put in a cheesemaking operation in Nettleton's Issaquah Creamery Plant? A. Yes.

Q. And how did you get along with that?

A. Well, I got along pretty well, I guess—well, my contract was too good for them, because they [2419] started to get into financial difficulties, and they didn't tell me too much about it, of course, but I know I had quite a time over collecting for my contract payments, at so much a pound, on the cheese and finally it came to the point that the banker, who was A. L. Peters, who was a brother of the Peters in Snoqualmie, who ran the Issaquah State Bank at Issaquah, came to talk to me about trying to run the plant. He said the bank had about \$21,000 coming from the Creamery, and he knew I had some money coming in wages for making cheese, and he said as far as the Nettleton Brothers

(Testimony of Hans Forster.)

was concerned, the bank had to go ahead and take it over.

Q. So, I was up against it again, but I told him I thought possibly I could make it pay. I wasn't sure. We was doing some evaporating at that time. They had an old condensing plant in there and we was evaporating milk in ten-gallon cans, what we didn't put into cheese or butter, and sold it to Armour and Company at Enumclaw.

Anyway, Mr. Peters said that we had to go ahead and talk to the producers, so much was owing to the farmers and so much was owing to the bank, and as far as the bank was concerned, it was willing to wait if the farmers would hold still without throwing it [2420] into bankruptcy.

So, we had a meeting, and talked to the producers, and they said they was willing to give me a chance. So, Mr. Peters was more or less my right-hand man of handling my affairs at the bank and he—we made an agreement that both of us would have 49 per cent of the stock and he would give me the stock if I would throw my money in I had coming from the Nettletous and throw my cheese equipment in the Creamery and was willing to operate it, and he would take his other 49 percent of the stock and it would hold against liabilities that the bank had, around \$21,000 and he said if I could in a number of years pay the producers and pay the rest of the creditors and pay the bank off, I could have the other 49 percent of the stock and then two percent of the stock was held in escrow at the bank.

(Testimony of Hans Forster.)

That is, if something should happen to me, that Mr. Peters would get control of it and he would have 51 percent, and if something should happen to Mr. Peters, that I would have control of it.

Q. So, did you go into that deal then?

A. I went into that deal, yes.

Q. Before doing that, and going into it, and while you were manufacturing cheese in the Nettleton Creamery, did you keep or have any books of account? [2421]

A. They kept books in the creamery.

Q. But did you have anything to do with the keeping of them? A. No, I didn't.

I think a young fellow by the name of Claude Halestone and Clark Nettleton handled some, I don't know which.

Q. Now, in going into this deal to take over this escrowed stock operation in the creamery with the bank or with Mr. Peters for the bank, were you represented by any lawyer? A. No.

Q. Or did you have an accountant?

A. No, Mr. Peters handled it all.

Q. You again were relying on the banker?

A. That is right.

Q. This takes you—now, was it in 1929 that you made this deal?

A. I would think so, yes.

Q. You were then 25 years of age, is that right?

A. Yes.

Q. The effect of which was that at that time you acquired a half interest in the corporation?

(Testimony of Hans Forster.)

A. Yes, that is right. [2422]

Q. 49 per cent? A. For what I——

Q. ——of the escrow privilege?

A. I threw my cheese equipment in there, and what the company owed me at that time.

Q. And you had to work out from the operation funds with which to keep going, and to pay the indebtedness?

A. That is right. And part of the agreement was my salary from or through the bank was paid at the rate of \$150 a month.

Q. And for this period, whatever it was, while you were trying to make this, you were limited to \$150 a month and salary? A. That is right.

Q. Now, had the Nettleton interests in the Issaquah Creamery immediately preceding this deal between you and Peters, had they had an auditor?

A. I think during the time that the bank had difficulty with the Nettleton Brothers, Mr. Taylor came into the picture, I understand. I think that is the first time I met him, through Mr. Peters.

Q. Now, at the time, or just prior to your taking over, and when you were making cheese in the Nettleton Creamery plant, did you have any employes [2423] under you?

A. I think during the summer months, I had a high school kid that helped me on the cheesemaking deal during the flush period. Otherwise, I did it all alone.

Q. You did it all alone? A. That is right.

Q. Now, having placed the cheesemaking equip-

(Testimony of Hans Forster.)

ment into the creamery operation in this deal with Mr. Peters, will you explain to the Jury what, and describe the operations of the Issaquah Creamery as you commenced in 1929 to try and make a living and pay out this indebtedness?

A. Well, we had a churn and a butter churn and pasteurizer and we had this cheese rack and cheese press and cheesemaking equipment and we had a condensing plant that we continued with.

I think, to start out with, there was about five of us working in the plant, including myself, and part of the time, or during the fall, we was trading blackberries up there and sold it to the cannery and the cream that we got, we gathered together some sour cream shippers, people that had a few cows and wanted to feed skim milk to the packers, and we had and ran a couple of churnings of butter a week, and, of course, [2424] the Issaquah Creamery was—used to be the Northwest Milk Condensing Company and the building itself was just about the same kind of shape as the condenser was up at Tolt, except this one was operating, and the other one wasn't.

Q. Well, from whom—primarily, you were interested in obtaining milk and selling it or processing it one way or another; is that right?

A. Yes.

Q. As of that time, 1929, what was the situation as to the producers? Were there large herds? Did you have a supply ready, or did you have to go out and get your milk?

(Testimony of Hans Forster.)

A. We had pretty rough competition even when I started at Falls City. Carnation ran the condenser at Monroe and Borden's up at Auburn and I was between there, and between the two of them they had a dividing line. Carnation wouldn't go into Snoqualmie, and North Bend, and Borden's wouldn't go into the Valley. There was a dividing line. Competition was rough in getting the milk, especially when the farmers got burned a couple of times, and they started to ship to outfits where they know they got their money, so it was kind of rough to procure the milk from the producers, and we always had competition so far as price was concerned [2425] with the condensery; otherwise, we couldn't get the milk.

So, I had to naturally, develop that, and go out and see the producers and see the farmers and keep them satisfied, and telling them I knew it was going to work out, and at that time already there—they had quite a bit of confidence in me because I paid them all off when I burned out at Falls City and most of the producers stuck with me all the way through.

Q. What was the market situation of your product at that time?

Mr. Moriarty: 1929?

Mr. Griffin: 1929.

Q. (By Mr. Griffin continuing): The time you started?

A. Well, just like I said, the market situation—the butter we made out there, we branded it our-

(Testimony of Hans Forster.)

selves and sold it to the local stores, and the cheese, we sold to the packers, and the evaporated milk we sold to Armour that was doing the canning up at Enumclaw until the 1929 deal, and then we started to get into the '30s and the market went all to pieces.

Q. Now, did you have anything to do at all as that operation commenced with books or the book-keeping [2426] system of the Issaquah Creamery?

A. No, I have never had anything to do with it, either the books or the bookkeeping system until——

Q. (Interposing) And as you commenced that operation, did you have any milk routes or drivers?

A. Well, we didn't have any of our own milk routes. We was—the milk hauling was contracted out. My father-in-law at that time still was hauling the milk from Snoqualmie Valley, and Castagno Brothers, Issaquah Transportation now, was hauling the milk. I think we had one truck that we used to pick up the sour cream among the sour cream farmers, and that is the truck that I used to peddle our butter.

Q. At the time that you took over this operation and tried to work it out, did the Nettletons have any clerical staff or bookkeepers?

A. Yes, Alice Neukirchen worked there at about that time, and so did Claude Halestone.

Mr. Moriarty: I didn't hear the last name.

The Witness: Halestone.

Mr. Griffin: Halestone.

(Testimony of Hans Forster.)

Q. (By Mr. Griffin): In latter years, was Alice Neukirchen succeeded by her sister Caroline Neukirchen?

A. Yes, we had Alice first, and then Bud and then Caroline, "Kelly." [2427]

Q. You generally call her Kelly?

A. That is right.

Q. And who succeeded Halestone?

A. I think Harold succeeded—Harold Erickson succeeded—Alice Neukirchen.

Q. Harold Erickson succeeded Alice Neukirchen? A. Yes.

Q. All right; so, is it fair to say that you took over the business as you did and these employes were in the office at the time that you took it over, and continued to be there until they were succeeded by others? A. That is right, yes.

Q. And the primary products at that time, I think you said, of the Issaquah Creamery were butter, cheese and evaporated milk? A. Yes.

Q. Had you, prior to that operation, had any experience of any kind with corporations?

A. No.

Q. Now, the year,—did you—what—aside from going out to see the farmers and trying to obtain a source of supply, did you have anything to do with the selling of these things that you manufactured? A. Yes, I was the salesman.

Q. You were the salesman? [2428]

A. Right.

(Testimony of Hans Forster.)

Q. And who was the—who manufactured the cheese? A. I did.

Q. Did you—what was the nature of any other assistants that you had at that time?

A. Well, we had a fellow that dumped the milk and dumped the cream and pasteurized the cream and we had a fellow that ran the condensing plant and done the Babcock testing and the combination buttermaker and the fellow that fired the boiler.

Q. Does that about cover your plant?

A. That is about it. Everybody helped each other out. If one fellow was ill, they worked in the cheese room or anything else.

Q. And you had two people in the office?

A. That is right.

Q. Did you have any supervision of any kind as to how the office was handled?

A. Well, I think in those early days as long as Mr. Peters was interested in it, he was the man that handled that part. He looked after that end.

Q. Now, the year following your acquiring this opportunity, did you do any expanding?

A. Yes, I—Mr. Brehm of the Brehm Stores, came [2429] out to see us, and told us that he was interested in buying some cottage cheese curd from us. That is, the dry cottage cheese before it is creamed and I never made any cottage cheese before, so I—the first few batches we turned out wasn't too hot. It was more like buckshot than cottage cheese but we worked it out and started to furnish Brehm cottage cheese, so after we worked

(Testimony of Hans Forster.)

that out with him, he told me that he was quite interested in going into selling fresh milk out of the Brehm Stores, so we started getting into the fresh milk business, and about the same period it happened that we went in and started to make ice-cream.

Mr. Griffin: I will have you tell us something about ice cream right after dessert.

The Court: Ladies and Gentlemen of the Jury:

We will now recess for luncheon, and the Court calls your attention to the admonition given you on similar occasions, and asks that you heed it on this occasion.

You may now be excused until 1:45.

(Whereupon, the Jury retired from the courtroom.)

The Court: This case will be recessed until 1:45. Court will remain in session.

(Whereupon, at 12:15 o'clock p.m. a recess was [2430] had in the within-entitled and numbered cause until 1:45 o'clock p.m. March 26th, 1954, at which time counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the jury was returned to the courtroom.)

The Court: You may be seated. It is stipulated that the jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

(Testimony of Hans Forster.)

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Griffin.

Q. (By Mr. Griffin): Mr. Forster, just prior to the noon recess, you testified about your expanding into the—started to tell about expanding into the ice cream business, which, I believe, was in 1930 at the Issaquah Creamery. What did you do in that particular?

A. Well, I think it was in 1930 and 1931 we put in a homogenizer to make our mix, ice cream mix, and put in the 40-quart drying freezer, and we started out to sell the ice cream to the outlets in the Issaquah Valley and Snoqualmie Valley at first, drugstores and delicatessens. [2431]

Q. Did you have any experience yourself with ice cream?

A. No, my experience, so far as the dairy part was concerned, was cheesemaking and buttermaking.

Q. Did you employ someone especially then for the ice cream department?

A. Yes, we employed an ice cream maker.

Q. Now, this was in 1930; did you, as of that time, have any financial resources other than as you had started in this matter in taking it over the year before?

A. No, that is all the resources we had. That equipment, we made small down payments, and some of the pasteurizers, we bought used equipment.

Q. And you were quite dependent, as I under-

(Testimony of Hans Forster.)

stand, at the start on Mr. Peters, the banker, for advice—financial advice? A. That is right.

Q. In 1930, did anything happen to Mr. Peters' bank?

A. Well, yes; around 1930 or '31, I couldn't exactly give you the six months' period when it happened, but as far as Issaquah State Bank, and Mr. Peters was president of it, it got into financial difficulties, and Mr. Hall of the bank in Tolt and Mr. Roberts of the bank [2432] in Redmond and Kirkland and Peoples National Bank came in and took the Issaquah State Bank over.

Q. Going back for a moment to your reference to ice cream mix, did you ever personally make any ice cream or ice cream mix commercially?

A. No, I sought help to make it.

Q. And what is ice cream mix in your business, and referring to the business as it eventually expanded?

A. Well, ice cream mix is a mixture of fresh condensed, either condensed skim or condensed whole and some sweet cream and stabilizer and sugar.

Q. I didn't mean particularly what the contents were, but I mean, what is it, for what purpose is it made, and how is it disposed of?

A. Well, that is the liquid, the ice cream in its liquid form. In other words, you make the ice cream mix first, and after you make the mix, then you freeze it.

Q. Well, you say that you freeze it; now, you

(Testimony of Hans Forster.)

were making both ice cream mix and ice cream?

A. That is right.

Q. But did you make ice cream mix for sale?

A. Yes, we was one of the—probably one of the first people that—first concerns that started [2433] to sell ice cream mix to counter freezers, and we sold it to them in five-gallon cans, or ten-gallon cans.

Q. In that connection, in those sales, were those connected with any other concern, or sales of any equipment?

A. Yes, when we—the first sales of ice cream mix, when we started to go into it, was through—it was approached by the Mills Novelty Company who sold counter freezers like the Sweden people sell Sweden freezers, and they were selling two and one-half gallon freezers, where you put in two and one-half gallons of mix and get five gallons.

Q. And did you then sell both the mix and supply equipment to the customer, as time went on?

A. Well, yes. In too many instances we furnished all the equipment. We helped in making down payments to customers. In other words, if the down payment on one of those freezers was \$500 the customer put in \$250 and the creamery put in the other \$250 and we made a mix agreement for them to buy their ice cream mix and pay it back on a gallonage basis, 20 cents or 30 cents a gallon, whatever the mix would be, until it was paid up.

Q. And—— [2434]

Mr. Moriarty: (Interposing) Was this 1931?

(Testimony of Hans Forster.)

Mr. Griffin: 1930 and 1931.

Q. (By Mr. Griffin continuing): As it went on, which we will reach later, did that sale of mix, supplying equipment to the purchaser, become a substantial part of your business, that is, one of the substantial parts of the business?

A. Yes, our mix business was, in those middle '30s was much larger than our ice cream business. We got up to an annual volume of around 500,000 gallons of ice cream mix.

Q. This morning you referred, I believe, to farmers dealing—that you went out to deal with farmer producers and you used some other term referring to producers of milk. Do you make any distinction when you are referring to these people as between farmers and producers?

A. No, that is one thing. Milk shippers.

Q. Shippers, that is the term you used?

A. That is right.

Q. You are referring to the Dairymen, whoever they may be, that have the cow that sells the milk?

A. That is right.

Q. Now, did the Issaquah Creamery, when you went [2435] into it, have any fresh milk business?

A. No, we didn't have any fresh milk business until either the late '30s, or early 1931, I think, we started to bottle fresh milk.

Q. You mean the late '20s or 1931?

A. Yes.

Q. Who instigated the fresh milk item at Issaquah?

(Testimony of Hans Forster.)

A. Mr. Brehm of Brehm Stores approached me on it. He said he would——

Mr. Moriarty: (Interposing) I think this has been gone over.

Mr. Griffin: Not this one. I haven't touched it.

Mr. Moriarty: Before we adjourned, Mr. Brehm had become the milk outlet in Seattle.

The Court: There was some reference to Mr. Brehm.

The Witness: That was cottage cheese curd.

Mr. Griffin: Ice cream and cheese.

Mr. Moriarty: And then the milk.

Mr. Griffin: The milk is important in the defense we reach later.

The Court: You may proceed. [2436]

Q. (By Mr. Griffin): Explain briefly to the jury the fresh milk business that you commenced at the Issaquah Creamery in 1931?

A. Well, we was approached by Mr. Brehm at that time in the early 1930's. He had either eight or nine stores. He expanded later, and I think he got up to 15 or 16 and he was buying cottage cheese curd and cream and mixed the cottage cheese up himself and sold it in bulk in his stores in the big pans, and he approached me and said he thought he could do quite a milk business out of the stores, and I said, "Well, just how much do you think you could sell?" And he said, "I ought to be able to sell ten cases out of each store." Which would be about 100 cases a day. I said, "It will probably be quite

(Testimony of Hans Forster.)

an investment, but if you think you can sell that much, I will be glad to look into it.”

And I talked to Mr. Peters about it, and he—we checked with supply people that sold the equipment—the washer, and we had a pasteurizer already, and we had to get a cooler, and we finally got to agreement where we made a thirty percent down payment and purchased that equipment, and that is the way we went into the fresh milk business.

Q. And at that time, the fresh milk was [2437] delivered in Seattle from where?

A. From Issaquah.

Q. And the Brehm Stores, your major outlet, were located where?

A. All the Brehm Stores were in Seattle.

Q. Now, had you any experience as of that time personally theretofore in the—in that branch of the milk industry?

A. No, I never worked in the fresh milk plant before, but I tackled it myself, and I had to join the Union, and I pasteurized and bottled my own milk for about, I would say, a little bit over a year.

Q. You had to join the Union to be able to do that?

A. That is right.

Q. Now, did you have a—did you have any particular wholesale business at that time?

A. Well, Brehm Stores, that is what you call wholesale business. In other words, you sell it to the store. But, instead of selling 100 cases a day, he sold, I think, about 35 so he told me he was sorry and tried to do everything he could by advertising

(Testimony of Hans Forster.)

to see if he could increase this trade to make it worthwhile, but it went slow, and I had to contact other stores, and I told him we couldn't operate on that basis, and I started [2438] to contact some jobbers that was buying milk of other dairies, and induced them to start to buy milk from us.

Q. You have referred to a jobber. What do you mean by a "jobber"?

A. An independent operator that owns his own route, and he buys the milk from the dairy f.o.b. platform and handles his own collections and accounts, and pays the dairy so much for the milk on the platform after we take it out of the ice box.

Q. In the delivery of milk from Issaquah to your outlets in Seattle, did that require investment then in trucks and transportation facilities?

A. Yes, we bought——

Q. (Interposing) I don't care about the details.

A. (Continuing) Yes, we bought a big Fageol Truck. That was the first dairy truck we had.

Q. One truck? A. That is right.

Q. Now, did that kind of operation, the making of butter, cheese and ice cream mix and ice cream and the sale of liquid milk continue for the next two or three years at Issaquah?

A. Yes, we started to grow, and—— [2439]

Q. (Interposing) How did you start to grow?

A. Well, by getting more business.

Q. How did you get more business?

A. By going ahead and contacting customers.

Q. Who did that? A. I done most of it.

(Testimony of Hans Forster.)

Q. And as you started to grow, what did you do as you progressed then?

A. Well, we soon learned that it was too far for the trucks to drive between Seattle and Issaquah. Those days we didn't have the Floating Bridge, of course, and we had to go by Renton. So, we established a depot where we built in an ice box on 23d Avenue and Rainier, and we hauled the bottled milk in from Issaquah in to the ice box, and we had one man that loaded up the trucks of those jobbers and for our own independent routes, and he collected the money from the drivers, and that is when Mrs. Wilcox started to go—went to work for us as office girl.

Q. Before I get down to Alpine, what—do you recall the time that you acquired an interest in the Puyallup Creamery, or what has been referred to here as Simonson and Forster?

A. Yes, I think it was in around 1933 or 1934.

Q. All right: now, you had met Hicks Taylor first, I understand your testimony, when you went into [2440] this deal with Peters into the Issaquah Creamery?

A. That is right; I met Mr. Taylor through Mr. Peters, who, at that time, was the banker, and he brought Mr. Taylor in to find out just what liabilities and assets was that the Nettletons left over when they walked out.

Q. When did Mr. Taylor first enter your employ in any capacity: by your "employ," either yourself or the Issaquah Creamery?

(Testimony of Hans Forster.)

A. Well, I would—I am quite sure that Mr. Peters didn't—

Mr. Moriarty: That is not responsive if your Honor please.

A. (Continuing) Well, it was in the early '30s.

Q. Was it immediately upon your going into the Issaquah Creamery deal?

A. When I went in there, that is when Mr. Peters got Mr. Taylor to make an audit of the Issaquah Creamery.

Q. And did Mr. Taylor then continue to work for you?

A. He has been connected with it ever since, yes.

Q. Now, what was the first outside interest that you acquired after you commenced this operation of [2441] the Issaquah Creamery?

A. Puyallup Creamery.

Q. And that is known here as Simonson and Forster?

A. Simonson and Forster, yes.

Q. Who handled the matter of that acquisition?

A. Well, Mr. Taylor helped me handle it with Mr. Simonson, and Mr. Simonson was manager of the Red Rock Creamery in Kent, and I met him out in the field and he contacted farmers and knew of the sale, that the Puyallup Creamery was for sale, and he wanted to know if I was interested in going into partnership with him, and after him and I looked it over, I talked to Mr. Taylor about it, and we bought it. I think we put in \$1,250 apiece.

Q. By "we put in \$1,250 apiece." you mean who?

(Testimony of Hans Forster.)

A. Oscar Simonson and myself.

Q. The Puyallup Creamery was not a corporation, was it?—at that time that you purchased; it was a partnership?

A. I don't think it was. I think it was a partnership and Mr. Hansen owned it.

Q. How did you happen to consult Mr. Taylor about that deal? [2442]

A. Well, he was already my accountant and my associate.

Q. Did you have any lawyer?

A. No, I think Mr. Taylor handled it all.

Q. And then was Simonson—when you and Mr. Simonson purchased the Puyallup Creamery, then it was incorporated Simonson and Forster, wasn't it?

A. That is right.

Q. Who incorporated Simonson and Forster?

A. I think Hicks Taylor did.

Q. And you had no lawyer in that instance?

A. No.

Q. And who set up the books of Simonson and Forster? A. Hicks Taylor.

Q. And was Mr. Taylor director and officer, in Simonson and Forster from the time it was set up?

A. I think he was secretary; I think he was a director, too.

Q. Treasurer? A. I think so.

Q. Did you know very much about those matters, or how the corporation was run or how it should be run?

(Testimony of Hans Forster.)

A. No, those matters, those days, clear up, I left it all up to him. [2443]

Q. To who? A. To Mr. Taylor.

Q. And then what was the business of Simonson and Forster in connection with its relationship to the Issaquah Creamery Company?

A. Of course, it was a different operation than—a different ownership. Whatever the Puyallup Creamery had to buy that Issaquah Creamery had to sell, naturally we got the business.

Q. Now, in what business—in what business was the Simonson and Forster business?

A. Well——

Q. (Interposing) That you established?

A. (Continuing) Well, that was mostly a buttermaking operation to start with with a retail store in the front.

Q. Did you know or have anything to do with the corporate books or records of Simonson and Forster?

A. I don't think I ever seen them except the stock certificates that Mr. Taylor gave me and put in my safe deposit box.

Q. Do you know whether or not you signed any minutes or any documents from time to time?

A. No, I am positive I didn't. I think Mr. Simonson signed most of the—all of the records [2444] with Mr. Taylor as secretary and treasurer.

Q. Who made the arrangements for payments of any money from Simonson and Forster to yourself?

A. Mr. Taylor told me—Oscar and I had a cer-

(Testimony of Hans Forster.)

tain agreement. I think \$400 a month that he was supposed to get as salary, and I wasn't supposed to get anything because I didn't spend too much time down there. I go down there once in a while. Most of the time the same day that Mr. Taylor go down, and we tried to get down there and probably have lunch and talk over the situation just about the dairy business.

And one day out at Issaquah when Mr. Taylor was out there going over the books, he told me if I knew that Oscar increased his salary to \$500 a month. I said "No, I didn't know anything about it"; he was writing checks, and he just increased his salary and I told him I sure would talk to him about it, because that wasn't the understanding, he was supposed to draw four hundred dollars a month period.

So, I got ahold of Oscar, and I told him that if he want to continue drawing \$500 a month, it was all right with me if the business could stand it, but I felt that I was entitled to \$100 a month just like he was. If he want to increase his salary from \$400 to \$500. And he said as far as he was concerned, the business couldn't [2445] stand it and he didn't want to cut his salary to four hundred.

I said "It is good enough for me. You send me \$100 a month as long as you draw \$500, and if you don't think the business can stand it and you go to four hundred, you can cut out the one hundred," and that is the way it started.

Q. Who handled it from there on, the matter of salary?

(Testimony of Hans Forster.)

A. That is where the salary was.

Q. Who handled the books on it?

A. Mr. Taylor did.

Q. Did you ever have anything personally to do with the books of account or records of Simonson and Forster?

A. When I went down there, sometimes once a month and sometimes every two or three months, I never looked at any books or—we just tried to get down before twelve o'clock so that the three of us could go out and have lunch and spend an hour and a half and I go on my way.

Q. By the three of you, you mean?

A. Mr. Taylor, Mr. Simonson and myself.

Q. Did Mr. Taylor usually accompany you when you went down to Simonson and Forster? [2446]

A. No, he came from Seattle, and I started to come down from Issaquah.

Q. But he was generally there when you were there, is that right? A. Yes.

Q. And do you have any idea or knowledge how the matter of salary was handled on the books, either corporate books or books of account, of Simonson and Forster?

A. No idea at all. That is the arrangement, the \$100 a month started and how they handled it on the books, nobody told me about it.

I never asked anybody, and I never looked at the books.

Q. Do you know who kept the account books of

(Testimony of Hans Forster.)

Simonson and Forster? That is, do you know the bookkeepers personally?

A. I have met the girls when I walk in the office. It wasn't the same ones all the time. They changed them so I didn't have anything to do with the hiring or firing of them. I didn't know if he needed two or one, or——

Q. (Interposing) Was Simonson and Forster a particularly successful operation?

A. Well, it was a pretty successful operation. It was quite small. [2447]

We went into the fresh milk business down there. This butter business that we were in and to start out with, a lot of these sour cream shippers either got larger and quit shipping sour cream, or they went out of business, and we did get into the fresh business under the name of Valley's Best, and we sold some fresh milk and started to freeze ice cream, and bought the mix from Issaquah Creamery, and we done fairly good at it. We expanded a little bit, and went to Burton and opened a cheese factory. I think it was in the late thirties, and didn't do so hot in that one, and pulled our horns in.

Q. Did you have to spend a portion of your time in the business of Simonson and Forster—overall set-up, I mean?

A. Well, yes, I put quite a bit of time in when we started it, at first, actually, because Oscar Simonson used to be a butter maker for Turner and Pease before he went out with the Red Rock, and Red Rock used to make cottage cheese, so when we

(Testimony of Hans Forster.)

went to Morton and started a cheese factory there, Oscar didn't know anything about making American cheese, and I had to supervise the cheese-maker, and I spent quite a bit of time.

Q. What year was that?

A. I think it was in the late thirties. [2448]

Q. Has your interest in Simonson and Forster been liquidated?

A. Yes, it was sold to the Tacoma Milk Producers Association.

Q. And is that part of the funds that went into the matter of taxes here?

Mr. Moriarty: Objected to.

A. That is right.

Mr. Moriarty: And move the answer be stricken.

The Court: On what ground?

Mr. Moriarty: It is immaterial, if your Honor please, what happened to the proceeds.

The Court: Well, it may be immaterial. I think it may serve to round out the other testimony, and we will not strike it, and you may proceed.

Q. (By Mr. Griffin): Now, did you acquire any other outside businesses that you recall in connection with Issaquah Creamery prior to 1940?

A. Yes, I bought out Green Pastures Dairy. They had about three or four routes in Rainier Valley, and they jobbed out of our plant, and they started to owe us quite a bit of money; I don't know whether we purchased them or not; we took them over to get them out of their misery.

And then I bought the Melrose Dairy in Ballard

(Testimony of Hans Forster.)

[2449] who went into the hands of receivers, and I took those routes and put them together, with Alpine.

Q. Now, the Green Pastures, about what year did you acquire that?

A. Gosh, I really couldn't tell you. It was in the middle thirties. It was all before 1940. Between 1932 and 1940.

Q. Who handled the details of those two acquisitions? A. Mr. Taylor.

Q. Now, had the business at the Issaquah——

Mr. Griffin: Before I get into that, strike that, please.

Q. (By Mr. Griffin): Did you make application to the Governmental authorities to become a citizen of the United States?

A. That is right.

Q. About how soon after you first entered the United States?

A. I would say about six months after I came into the United States.

Q. And were you eventually naturalized?

A. I was naturalized in 1931.

Q. 1931: all right: now—in evidence here are certain payments of military dues to the Government of [2450] Switzerland. You are familiar with that? A. Yes.

Q. I don't know whether you call it dues or taxes, whatever it may be, or tax. Will you explain to the jury that situation?

(Testimony of Hans Forster.)

That is, you were a fully naturalized citizen of the United States and had been since 1931?

A. That is right.

Q. Will you explain to the Jury how it happens that you pay military dues to the Government of Switzerland?

A. Well, when I left Switzerland, I went into—started to get into the recruiting service one year.

You start when you are twenty years old. But I wanted to get it over with, so I offered myself when—at the time I was nineteen, and at that time, I figured that it would take a certain length of time to get the visa and I might as well get to soldiers' school and get it done, and I was assigned to the artillery.

So when, I think it was about a week before the soldiers' school started, Andres said he had to leave and if I could get a furlough, I should do it, so I went to the military authorities and told them that I intended to go to the United States, and I wanted to get a furlough, and he said, "Don't you want to take the [2451] soldiers' school first?" And I said, "Well, I didn't know how much good it would do me over there," and I felt I had this opportunity to go with Mr. Andres, and I felt I wanted to go, and he said, "We will give you one year furlough."

So, he gave me one year furlough, and they gave me a furlough ever since, and I paid the tax into the Swiss Legation in Washington, D. C. I think it was \$50 a year, and, I don't know, for quite a

(Testimony of Hans Forster.)

few years; then I forgot all about it, so I didn't follow it up, and I finally got a letter from my Dad, my father, and he said that if I couldn't afford to pay it, that he would pay it out there, because he felt that as far as their part was concerned, they could go ahead and make him liable for it anyway, so I went ahead and paid my back taxes and kept on paying it up.

Q. That is, you came originally on a furlough, and that resulted in this requirement of him?

A. That is right.

Q. Now, what—who was taking care of the books and records of the Issaquah Creamery from the time you started in 1929, I believe, down until the year 1940?

A. We had different girls in the office.

Q. Yes, but who had the overall charge? [2452]

A. The fellow that overseered the office, Hicks Taylor.

Q. How close did your acquaintanceship and reliance on him from the time that you entered into that deal with Mr. Peters in 1929 down until 1940 go?

Mr. Moriarty: Object to the form of the question, and it asks for a self-serving answer. He can state the facts.

Q. (By Mr. Griffin continuing): All right; state the facts.

A. Our relationships were very close, not only from a financial part, but I also considered Hicks Taylor one of my best friends.

(Testimony of Hans Forster.)

Q. Had you come to rely upon his business judgment?

A. Well, I not only relied upon it, but I depended upon it.

Q. Now, you used the year 1940. I will come back to that. There was no change in that reliance and depending upon it, was there, up until the time that your present accountants went in to investigate these accounts?

Mr. Le Sourd: Objected to as leading.

Mr. Griffin: The only purpose of the question is that I don't want to leave any inference that I am [2453] stopping for any reason at 1940.

The Court: Do you stand on the objection?

Mr. Le Sourd: I do, yes.

Mr. Griffin: All right.

Q. (By Mr. Griffin continuing): Now, by 1940, what was the condition of the business of the Issaquah Creamery as to expansion and of the set-up you had made on this freezer on 23d and Rainier?

A. Well, by 1940, we acquired this property of the present Alpine Dairy on Rainier from Mr. Kristoferson, and all our——

Q. (Interposing) By the way, let me stop you for a moment.

Do you know who negotiated that purchase?

A. Hicks Taylor.

Q. All right, now go ahead.

A. We done all of the pasteurizing; we started to do all our pasteurizing when we moved from this ice box handling on 23d and Rainier down to the

(Testimony of Hans Forster.)

present Alpine Dairy plant. We put in the pasteurizing equipment and cooling equipment, and all this milk and cream was pasteurized at the present Alpine Dairy Building in 1940.

Q. Were you still, up until 1940, handling the [2554] sale of fluid milk out of the Issaquah Plant into the—this freezer box at 23d and Rainier?

A. I can't tell you if it was exactly 1940 but it was around that period that the switchover was made. First, we rented the plant from Mr. Kristoferson, with an offer to buy it. When the offer came along, we picked it up.

Q. Do you recall that that plant was leased when you first started that operation?

A. Yes, when we first went down there, it was. That used to be the old Rainier Valley plant that Mr. Wilson owned, the former County Commissioner in the Rainier Valley, and then in the North End was Consolidated with Kristoferson, and the plant was empty for awhile and then the brewery went in and started, and they couldn't make a go, so then it was empty again, and it was empty when we made a rental deal with August Kristoferson.

Q. Now, you eventually acquired all of the stock, did you, in Issaquah Creamery as the result of this original arrangement with Mr. Peters?

A. That is right. The portion that Peoples bank got out of the break-up of the Issaquah Bank, part of it, securities, I guess, was this stock that was in escrow, this 49 per cent, and when Mr. Peters knew [2455] this was going to come, he assigned the

(Testimony of Hans Forster.)

other two per cent over, but I guess he didn't tell Peoples Bank anything about it, and they found out later I had 51 per cent controlling.

Q. And then eventually you acquired complete control; did you?

A. Yes, it took quite a few years.

Q. Sir?

A. It took quite a few years.

Q. In the meantime, you had to pay off the debts of the Creamery, didn't you?

A. That is right.

Q. Do you recall what year you did acquire full ownership of the stock in the Issaquah Creamery?

A. I couldn't tell you just exactly which year it was, but it was held at Peoples Bank until—in fact, they helped me, financed fresh milk equipment and they helped me along.

Q. Now, when you first went into the Issaquah Creamery deal with Mr. Peters, Issaquah Creamery was a corporation, wasn't it?

A. That is right.

Q. Do you know—did Mr. Taylor, when you went into that deal, become an officer or a director of the Issaquah Creamery?

A. Yes. I think Mr. Taylor was secretary of [2456] the Issaquah Creamery Company.

Q. And did he continue to hold that office until the matter of his own conviction arose?

A. That is right.

Q. And who kept the corporate books and records of the Issaquah Creamery Company?

(Testimony of Hans Forster.)

A. Mr. Taylor did.

Q. Did you have anything to do with them?

A. No, never seen them.

Q. Now, I think there was testimony that at some time about 1940, the operation of Issaquah Creamery was severed from the fresh milk business; is that right? A. That is right.

Q. Now, how did that come about, and from whom did you have any advice, if you did have advice, in regard thereto?

A. Well, I had—I didn't give anybody any advice, because I didn't know anything about it, but Mr. Taylor handled it, and I think he was discussing with Mr. Hall, and at that time, he told me that he thought it would be a good idea to try to engage some attorneys to handle it, and I think that is the first time we have—that Jones and Bronson—that Mr. Jones was our attorney.

Q. How did that—how did—is that Mr. Harry Jones of Jones and Bronson? [2457]

A. That is right.

Q. How did Mr. Jones become your attorney?

A. Well, Mr. Taylor told me that he thought we should get an attorney to handle it, and he said he was acquainted with Mr. Jones in tax matters, and so he is the one that hired Mr. Jones.

Q. And that was for the purpose of making the severance of the two businesses, was it?

A. Well, I think that was the original work they done for us.

(Testimony of Hans Forster.)

Afterwards, Mr. McEwen done some work for collections, and odds and ends.

Q. Well, Mr. McEwen was in the same firm, wasn't he?

A. That is right, and Mr. Birdseye.

Mr. Moriarty: When was that?

Mr. Griffin: In 1940.

Q. (By Mr. Griffin): Did you participate at all in any of the negotiations on how this was to be done?

A. No. I may have signed the papers in the end, but I never had anything to do.

Q. Did you know any of the details of the division?

A. No, I didn't. I met Mr. Jones when [2458] the thing was set up.

Q. Who confirmed with Mr. Jones for you in that matter?

A. Mr. Taylor handled that whole changeover.

Q. Do you know why the changeover was made?

A. Well, we talked about it a few times. I think one reason was that maybe during the years as they came on, maybe we wanted to try to sell either the manufacturing setup or try to get rid of the fresh milk part, and figured that if we ever wanted to make a sale, that it was much easier to try to sell certain divisions of them than to try to sell the whole works together.

Q. And was it upon, as a result of that situation that Alpine Dairy was established in Seattle?

A. Well, we used the name of Alpine quite a

(Testimony of Hans Forster.)

bit earlier, but it wasn't under the corporation deal, but it was in 1940 that the Alpine Dairy became Hans Forster doing business as Alpine Dairy as my own proprietorship.

Q. Do you know any distinction between Alpine Dairy as distinguished from Issaquah, the corporation?

A. Well, I owned it all before it was separated and I figured I owned it all after it was separated.

I owned it before, so, so far as I was concerned, it was the same kind of an ownership. I owned all the stock in Issaquah Creamery, and I owned the Alpine Dairy part.

Q. Who set up the books, the bookkeeping department, for Alpine Dairy?

A. Well, all the books in all the central—all those different companies—was set up by Hicks Taylor, and I think the actual book part for Alpine Dairy was set up by 1940.

Q. By Mr. Taylor? A. That is right.

Q. Do you know anything about the bookkeeping set-up of Alpine Dairy before this division was made?

A. No, I never knew anything about it before, and never knew anything about it afterwards.

Q. Who did you depend on in that particular?

A. I depended on Hicks Taylor handling it like he always did.

Q. There was something said in an opening statement that when the division was made, that

(Testimony of Hans Forster.)

Mr. Taylor, as I recall it, requested additional compensation.

Was there ever any discussion with Mr. Taylor about pay? [2460]

A. Well, I think probably we had some discussion.

In most of the establishments, he made his own salary. He didn't—in fact, up at Conway, he wrote his own check, and we never had any disagreement about pay.

I don't know if he had \$100 before it was separated from Issaquah Creamery, or if he had \$50 and raised it to \$100, but we never had any agreement about his pay.

Q. Who fixed his pay?

A. He fixed it himself.

Q. And now, will you describe the severance between Issaquah Creamery Corporation and the Alpine Dairy operation that physically has been made? Will you describe what the major business of each was in its community then?

That is, the actual operation itself.

Mr. Moriarty: Fix a time, please.

Mr. Griffin: 1940.

A. Well, of course, by that time, Issaquah Creamery started to be quite a heavy supplier of cottage cheese on the Seattle market, and at Puyallup Creamery, we got into the Tacoma market, and Issaquah Creamery supplied Alpine Dairy with the skim milk and the [2461] cottage. All we done at the Alpine Dairy is like it is done today. We

(Testimony of Hans Forster.)

just get the milk in from the farmers and we pasteurize it and we bottle it and sell it out and all the by-products at that time came from Issaquah, and now the last few years, we started to make butter-milk at the Seattle plant and bottle it. In fact, that is part of the City requirements now, that this milk got to be bottled where it is received.

And the Alpine Dairy, 1940, was 100 percent fresh milk operation. That was the difference between the manufacturing set-up at Issaquah, like condensed milk. We didn't just supply Alpine with it. We supplied Hi-Grade Dairy and Horluck's Creamery, and supplied manufacturing products for some of our own competitors that was in the market.

Q. And Alpine dealt only with delivery of fresh milk?
A. Fresh milk and cream, yes.

Q. At the time that that operation was severed with Issaquah, it was still 1940, as you began, do you have any recollection of how many drivers you had—deliveries?

A. Oh, I think we had around 35 routes, 32.

Q. And that is for retail trade? [2462]

A. Retail and wholesale.

Q. Retail and wholesale?

A. Restaurants and grocery stores.

Q. In Seattle? A. Yes.

Q. And as far as Alpine is concerned, Alpine Dairy is concerned, did you continue that same operation with no particular change up until Alpine was liquidated by sale?

(Testimony of Hans Forster.)

A. Well, yes, we built on and added more routes to it, and got more jobbers.

Q. How did you do that?

A. By going out and getting more business.

Q. Who did it?

A. Well, I didn't do it alone. I had a lot of good help.

Q. But did you work on that?

A. Oh, yes, I handled just about all of the wholesale sales. Everything was done under my supervision.

Q. By the year 19—end of 1949, and the year 1950, so far as Alpine Dairy is concerned, how many routes did you have, approximately?

A. Well, of course, we run about 70 routes out of the Alpine Dairy, and we ran about 45 out of Apex [2463] Farms.

Q. I will come to Apex Farms later, but out of the Alpine Dairy, from whom did Alpine Dairy purchase—from whom did it get its milk?

A. From who we bought the milk?

Q. Yes.

A. Well, until Washington Milk Producers organized, I would say about 1948, we bought about 60 percent of our milk through the cooperatives, and about 40 percent of our milk was bought direct from individual independent producers.

Q. But it all came from a farming dairy producing group?

A. That is right, yes.

Q. And who generally made those contacts on acquiring the milk?

(Testimony of Hans Forster.)

A. I had all the work in acquiring the milk either as independent producers or negotiations with Consolidated Dairy Products or Seattle Milk Producers.

Q. Have you any idea of the amount in dollars of milk that was sold by Alpine Dairy as of the time that you liquidated the matter?

A. Well, of course, you have the other products that go with it. You have butter and cheese. [2464] It probably ran up to—around three million dollars sales.

Q. A year? A. Yes.

Q. Now, in the meantime, Issaquah Creamery was continuing its end of the business, wasn't it?

A. I didn't quite get you.

Q. I say, during this same period of time, Issaquah Creamery was continuing with its operation of cottage cheese?

A. Yes, and in latter years, it put in a roller powder plant.

Q. Making powdered milk? A. Yes.

The Court: Ladies and Gentlemen of the Jury:
We will now——

Is this a convenient time?

Mr. Griffin: Yes, your Honor.

The Court: We will recess for the mid-afternoon recess. And the Court calls your attention to the admonition given on similar occasions and asks that you heed it on this occasion.

You may now be excused.

(Testimony of Hans Forster.)

(Whereupon, the Jury retired from the courtroom.) [2465]

(Whereupon, at 2:46 p.m. a recess was had in the within-entitled and numbered cause until 3:02 o'clock p.m. March 26, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated. It is stipulated that the Jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Griffin.

Q. (By Mr. Griffin): Now, in the operation of Issaquah Creamery and a portion of its function into Alpine Dairy, did you know or understand the details of that severance?

A. I didn't know anything about the details at all. I knew there was a severance, and it was going to be handled as Hans Forster doing business as Alpine Dairy.

Q. Did you know or realize that you were selling part of your business to yourself?

Mr. Moriarty: It is leading. [2466]

A. Well, I owned both of them so that I don't know what I was selling to myself, if I already owned it.

(Testimony of Hans Forster.)

Q. (By Mr. Griffin): Now, at the time that—you have testified, I believe, that at the time of the liquidation of Alpine Dairy the business had grown to about three million dollars a year in gross sales?

A. Yes, I think that was the figure. I couldn't tell you offhand. I was just trying to divide from the total sales we had from all the businesses, and I couldn't tell you offhand unless I take a look at it.

Q. In 1940, at the time that this severance was made, have you any idea what the gross business of the Issaquah Creamery was? A. In 1940?

Q. Yes.

A. It would be purely a guess, but I would say that Issaquah's factory operation in 1940 and the fresh milk operation didn't run probably more than three million dollars.

Q. At the time of the liquidation of the Issaquah Ice Cream—Issaquah Creamery, have you any idea what its gross sales had reached? [2467]

A. If I remember back, I think the gross sales of both of the companies was very much alike. Maybe Issaquah Creamery was a little bit less, maybe two and one-half million dollars.

It is just a guess. I couldn't tell you.

Q. Did then this severance increase the fluid milk sales in Seattle through Alpine?

A. Well, I think our fluid milk sales kept on increasing all the time.

Mr. Moriarty: From 1940?

Mr. Griffin: Sir?

(Testimony of Hans Forster.)

Mr. Moriarty: From 1940?

Mr. Griffin: From 1940, yes.

Q. (By Mr. Griffin): You mentioned then——

Mr. Griffin: Strike that.

Q. (By Mr. Griffin continuing): Now, you became interested in Renton Ice and Ice Cream Company, did you?

A. Yes. From what I heard the last couple of months, it was in 1943. Otherwise, I couldn't probably tell you the year.

Q. Do you recall who the incorporators were of Renton Ice and Ice Cream Company? [2468]

A. Well, I think the incorporators were Ray Schneider and Cal Basket and Hicks Taylor.

Q. Who handled the negotiations in that matter to begin with, so far as you were concerned?

A. Well, to begin with, I think Ray Schneider and Cal Basket made the original contact with Mr. Williams, who owned the Renton Ice and Ice Cream Company.

Q. And maybe we can shorten this one:

Do you recall Mr. Schneider's testimony on the manner of acquisition of Williams' interest?

A. Yes.

Q. Why, if you were acquiring an interest in it and you were, were you not?

A. Well, originally, I wasn't supposed to.

Q. No, but what I am getting at is, it was Mr. Schneider's testimony, as I recall, that Mr. Williams didn't like you as a competitor, and you didn't want to appear in the picture; is that right?

(Testimony of Hans Forster.)

A. Well, I guess that was about it.

Q. And who handled your end of the matter in that acquisition in the corporation?

A. Well, Hicks Taylor was in on the deal all the way when it was apparent that I was going to be part of the—I was part owner and Hicks Taylor came in and [2469] handled my part.

Q. And was Mr. Taylor the secretary-treasurer and director of Renton Ice and Ice Cream Company from the date of its incorporation until after you employed—yes, until after you employed the accountants in this case? A. That is right.

Q. Did you have anything to do any time with the corporate books or records of the Renton Ice and Ice Cream Company?

A. No, I never did.

Q. Did you—who set up the bookkeeping system at the Renton Ice and Ice Cream Company when it was incorporated, if you know?

A. Well, I am sure that they had a bookkeeping system before, but after we took it over, Hicks Taylor went down there, and if he changed the books from what it was, or put in a new system, I don't know. He went down there and was going to be the accountant and have charge on that end and I never asked any questions, whether he changed his books or left it as Mr. Williams had it before.

I wouldn't know.

Q. Did you personally have anything to do with the books and records of the Renton Ice and Ice Cream [2470] Company?

(Testimony of Hans Forster.)

A. No, I never seen them, and never had anything to do with them.

Q. Now, did you have anything to do with the manner in which checks, first with which checks were issued by the Renton Ice and Ice Cream Company?

A. No, I didn't have anything to do with the division of it, or why it came about, or how it was handled.

Q. Did you have anything to do with the matter of the issuance of checks by the Renton Ice and Ice Cream Company, of any checks that were issued to you?

A. Not so far as I know. I signed a few checks down there, when Schneider was gone, and I stopped by and went over it, so that they had the two signatures and that is all.

Q. Did you know anything about the internal business operations, so far as the books go?

A. I didn't know anything about the book part, no.

Q. You, from time to time, received checks?

A. That is right.

Q. From the Renton Ice and Ice Cream Company; did you have anything to do with the arrangement, bookkeeping arrangement, of the drawing of checks by [2471] which checks were issued to you?

A. No, I didn't have a thing to do with it. It was mailed to me. I think all of them mailed.

Q. Did you have anything to do with any ar-

(Testimony of Hans Forster.)

rangement or issuance of checks, by the Renton Ice and Ice Cream Company, by which checks were issued to either Schneider or Mrs. Basket?

A. No, I didn't have anything to do with the salary arrangement or anything about the checks.

Q. Did you know anything about it?

A. I knew that I received the checks.

Q. But beyond that, did you know anything about it? A. No.

Mr. Le Sourd: Was there an answer to the last question?

The Witness: I said "No."

Q. (By Mr. Griffin): Now, do you know in what year, or about what year you acquired an interest in Finstad and Utgard?

A. Probably 1944 or 1945. I can't—I don't remember the exact year.

Q. What was the business of Finstad and Utgard before you acquired an interest in it? [2472]

A. Well, they were making cottage cheese, and making ice cream mix, and purchasing all grade A milk from some of the producers and bringing it down into the Seattle market.

Q. They were a competitor, were they, of Issaquah on the one hand and Alpine on the other?

A. Well, they were a very strong mix competitor.

Q. How did it come about that you became interested in and acquired an interest in Finstad and Utgard?

A. Well, Mr. Grant, who was one good sales

(Testimony of Hans Forster.)

manager for Mills Novelty, the people who sold the counter freezer equipment, acquired an interest with Mr. Cook, who was his—who was a salesman under him, or Mr. Roberts, and Mr. Egeness, both of them, purchased Finstad and Utgard from Mrs. Finstad. Mr. Grant should have come—instead of keeping on coming to me with the deals on freezer equipment and ice cream mix sales, he started to flow it into his own corporation up there, and I kidded him about it one day and said, “Look’s like you feel there is some money in the mix business, so that you don’t only want to have the commission on the sales on equipment but you like to get the profit on the mix sales.” And he said, [2473] “Well, if you are interested in it, we will sell it to you.”

I said, “Well, what is the deal; let’s take a look at it. Maybe I am interested; I don’t know.”

I felt I would like to get into the Skagit County area to purchase milk from producers in—for our fresh milk distribution down here, and Finstad and Utgard at that time had all independent producers so I—he gave me a figure on the deal, what it amounted to, and I said, “Well, you go up and try to sell Hicks Taylor on the idea, and if you can, maybe we can make a deal.”

Q. Why did you refer it to Hicks Taylor?

A. Well, Hicks would have to look over the situation before I would make a deal anyway, and I wanted to have Hicks Taylor go ahead and pass some judgment on the deal, how he felt about it after he looked into the situation.

(Testimony of Hans Forster.)

Q. Why would you have him look into it?

A. In the first place, I wanted to go ahead and he went that far to go into the books and find out what sales were and what profit and loss was, and he wanted to take a look at what I would buy. I wouldn't buy a pig in the poke. [2474]

Q. Why didn't you look at it, yourself?

A. I have never looked at a set of books in my life, and wouldn't know what to look at if I did.

Q. Did Mr. Taylor go up and take a look at Finstad and Utgard?

A. That was actually the only deal that Hicks Taylor didn't feel that I should tackle. He had a few different reasons, but after I explained to him what it would mean in trying to acquire it, I figured that from the profits they were making, that the business could pay itself out when—if he could go ahead and try to assist them to try and take part of the products from them, so we went up there, and Hicks Taylor went over the books, and he said the books looked like they were presented to him, and he couldn't see no reason why we shouldn't go into it.

Q. On that particular trip, you said, "We went up"; you mean by that, you and Mr. Taylor?

A. Yes, Hicks Taylor and I.

Q. Did you help him look over the books?

A. No. I don't know if—I think Mr. Grant probably went up at that time, too.

Q. What did you do while you were up there?

A. I talked to Vern Egeness.

(Testimony of Hans Forster.)

Q. And did you go into the plant? [2475]

A. That is right. I looked over the equipment.

Q. And did you then decide to acquire that interest?

A. I don't know if we decided that day or not, because Mr. Egeness didn't want to sell out to me too bad, because I was a competitor of his, and I think after some convincing from Mr. Grant and Mr. Cook that he didn't figure, even as a competitor, I wasn't too bad a guy to work with; so we finally made the deal.

Q. Did you have any lawyer representing you in that matter?

A. Nobody represented me, but Mr. Croson represented Mrs. Finstad and I think he represented Mr. Egeness.

Q. That is, he represented the sellers?

A. Yes.

Q. But you had no lawyer representing you?

A. No, Hicks Taylor and I sat in on this meeting in Mr. Croson's office.

Q. Who did you rely on for advice?

A. Well, I couldn't rely on Mr. Croson, because he was for the other side, so I relied on Hicks.

Q. And then you acquired the beginning interest, eventually resulting in full interest in Finstad [2476] and Utgard; is that right?

A. That is right.

Q. And who set up the bookkeeping set-up for Finstad and Utgard while you were acquiring your interest?

A. Hicks Taylor.

(Testimony of Hans Forster.)

Q. And who set up the manner of taking over the payments by you for that interest?

A. Hicks.

Q. Do you know anything about the details in that particular?

A. No, I wouldn't know how he handled it. I knew that we paid them three different payments, I think over forty thousand dollars, different payments of \$13,333.33, I think it was, and one-half of it went to Mr. Grant and one-fourth of it to Mr. Egeness and one-fourth of it to Mr. Cook, but in order to make forty thousand dollars as a whole, it was spread out over, I think, the original down payment, I think was one-third of that and then another one-third six months later, and the other one-third another six months later. I am not too positive how the terms were besides taking over the obligations due Mrs. Finstad. I think the total amount amounted to sixty thousand dollars balance, or something like eighteen or twenty. [2477]

Q. Did you know how any of those transactions were handled upon the books of Finstad and Utgard?

A. No, Hicks told me how to make the check out when the purchase was made, and I said, "To Alpine or Issaquah, or out of my savings account?" And it all depends on where we had the money in, and that is where he told me to get the check from.

Q. And did you have any knowledge of how the payments to Mrs. Finstad were arranged?

A. No. I didn't. I had arrangements with Mr.

(Testimony of Hans Forster.)

Egeness on his salary question. That is the only thing I handled with him.

Q. Was the limitation on salary, is that right?

A. Well, he had \$300 a month, and ten percent of the profits.

Q. Finstad and Utgard were situated at Conway? A. They were.

Q. That is in Skagit County?

A. That is right.

Q. And you referred to independent producers; by that, what do you mean?

A. Well, the producers that didn't belong to any cooperative.

Q. Now, after you acquired Finstad and Utgard, who became Finstad and Utgard's principal customer? [2478]

A. Well, Apex Farms, and, of course, at that time, Alpine Dairy. They kept on selling their mix under the Rainbow, under Finstad and Utgard brand, to the accounts direct. In other words, we kept the competition alive, and we started to purchase his surplus Grade A milk that went to Kristoferson before I made the purchase.

Q. All right; so that, in other words, you made the purchase of Finstad and Utgard, and Finstad and Utgard then sold to you as Alpine, primarily?

A. That is right, yes.

Q. When you acquired the interest in Finstad and Utgard, was Mr. Taylor elected secretary and treasurer of Finstad and Utgard?

A. That is right.

(Testimony of Hans Forster.)

Q. What was the principal business of the Renton Ice and Ice Cream Company in connection with your enterprises?

A. Well, the day we went in there in 1943, Renton Ice and Ice Cream Company made a lot of ice to sell to the houses and they were in the ice cream business and they were in the beer business.

Q. Now, you have heard testimony in this case about the Daisy Ice Cream Company?

A. That is right. [2479]

Q. What was your first information, so far as any business dealing was concerned, that you had from anyone in regard to the Daisy Ice Cream Company?

A. Well, we were the mix suppliers of Mr. Morris who was the sole owner.

Q. Mr. Morris was the sole owner?

A. Frank Morris, yes. It wasn't a corporation. It was privately owned.

Q. And what developed, or how did it originate that you eventually acquired Daisy Ice Cream Company?

A. Well, we—I don't think we were 100 percent suppliers of mix, but he had a very nice ice cream business in town. I would say probably around 100,000 gallons a year, and it was competitive with Auburn Dairy Products. I think he had only two suppliers, Issaquah Creamery, and the other was Auburn, and it was a highly competitive picture to get my share out of it. But we had very good arrangements with them that in order to service an

(Testimony of Hans Forster.)

account, delicatessen or grocery store, just about so much of your products as you possibly could, so that the competitor couldn't go ahead and shove you out like the large dairies had both milk and ice cream. I had to work with somebody who had ice cream so that if we got a milk account, we would have ice cream, too and [2480] that is the reason I worked with Mr. Morris. We worked very closely together.

Then, Mr. Gates, who was formerly manager for Carnation Company, left them and he started the Welcome Ice Cream Company, and then Mr. Taylor told me he was Mr. Morris's auditor, and that Frank Morris intended to sell his business to Mr. Gates of the Welcome Ice Cream Company, and I say "It is really going to the rough on us, not having ice cream with the milk part;" and he said, "Why don't you talk to them? I don't think the deal is far enough along that something can't be done about it."

So, I went to see Mr. Morris, and he said that was right, he intended to sell, and he said Mr. Gates made him an offer, and he was about to take it up, and I said, "Well, what is the deal?" And he said, "Twenty-five thousand dollars, and that includes the freezers I have here, and includes a couple of trucks and cabinets I have out in the ice cream accounts." And I said, "What is the terms on the deal? I am really interested in it, and actually wouldn't know what would happen if you sell you ice cream business to one of our competitors,

(Testimony of Hans Forster.)

and we wouldn't have any ice cream in town." And he said, "I will make it fairly easy. You can pay me twenty-five [2481] hundred dollars down, and pay me for the stock and the inventory and the rest can be monthly payments."

So, we made the deal.

Q. By making a deal, you mean by that that you agreed to purchase on those terms?

A. That is right, we made the deal. I think it was in Hicks Taylor's office.

Q. And who handled the details of drafting the papers and those matters in that purchase?

A. Well, there wasn't very much papers to handle; whatever was handled, Hicks handled it.

Q. Did you have any lawyer? A. No.

Q. In the matter? A. No.

Q. And so, you thereby—and that would be about 1944, wouldn't it?

A. It was middle '40s, some place there.

Q. Thereby you acquired Daisy Ice Cream Company? A. That is right.

Q. And I understand you to say that Mr. Taylor had been the auditor for Mr. Morris in the Daisy Ice Cream Company? A. That is right.

Q. And that is the same Mr. Taylor representing [2482] you in all your enterprises?

A. That is right.

Q. And the deal was closed in Mr. Taylor's office, wasn't it?

A. I am just about positive it was, yes.

Q. And who handled the books of account there-

(Testimony of Hans Forster.)

after insofar as you know of the Daisy Ice Cream Company?

A. Well, Taylor left instructions where to deposit the money, and I think that we made arrangements with Peoples Bank and from there on, I figured he was the one that was handling it.

Q. And when did you learn, if you did learn, that he claimed not to be handling Daisy Ice Cream Company after that?

A. Not until this situation came up here.

Q. Daisy Ice Cream Company was not a corporation, was it?

A. No; no, it was a private ownership.

Q. And in what set-up did you believe that Daisy Ice Cream Company was being handled by Hicks Taylor?

A. Well, it definitely was a part of Alpine Dairy; it had to be, because we had to use it competitive-wise. [2483]

Q. Where was the Daisy Ice Cream Company located? A. On Florentia Street.

Q. By the way, did you have a transaction in buying the land also from Mr. Morris or selling some land to Mr. Morris?

A. Well, just about that time, Hicks Taylor told me—we was looking for a piece of property. We didn't know if we was going to buy the Kristofer-son property down there at that time or if we was going to try to build some place else.

Mr. Moriarty: In 1944?

Mr. Griffin: Yes.

(Testimony of Hans Forster.)

A. (Continuing) I may be mixed up a couple of years, because it is hard to go back ten or twelve years and remember details. Anyway, Mr. Taylor told me that some account of his that he was accountant for, had a piece of property for sale on Denny Regrade. I think it was Hall somebody. Anyway, he steered me onto it and we bought that piece of property on Denny Regrade for, I think, it was ten thousand dollars.

Q. Who handled the matter of that purchase?

A. Hicks Taylor.

Then, we held it for a couple of years, and finally decided not to go up there, and try to make our [2484] expansion program at the present Alpine Dairy location and bought some more lots there from the County.

Q. Who handled those matters of buying the additional lots?

A. I think Mr. Yothers helped me.

Mr. Moriarty: Mr. who?

A. Mr. Yothers and McEwen.

Q. (By Mr. Griffin): Just a moment. You said, in regard to your purchasing of property in the Denny Re-grade, that "We held it." By that, do you mean you and Mr. Taylor, or were you referring to something else?

A. Well, it was in my name, I guess, but Hicks made the arrangements for the purchase, and he gave me the idea, and as it proved out, it was a good one.

Q. What I mean is, who owned it?

(Testimony of Hans Forster.)

A. Hans Forster did.

Q. All right; when you say "we then held it," you were referring to Hans Forster, were you?

A. Well, I always said "we" in any of my enterprises, regardless of whether I owned 100 percent or half; it was just a habit of mine.

Q. Well, actually, do you make any distinction in saying "we" as between yourself or Alpine Dairy or [2485] Issaquah Creamery, or any of your other enterprises?

Mr. Moriarty: Leading.

A. No, I didn't, but I guess I should have.

Q. (By Mr. Griffin): What I am getting at:

Did Mr. Taylor individually have any interest in this piece of property after your acquiring it?

A. No, it was my piece of property.

Q. And this piece of property that you acquired in Denny Re-Grade, did that have any relationship to the—your obligation that you owed Mr. Morris for Daisy Ice Cream?

A. He came to me after we made a few payments, and he said he would like to buy the piece of property. He said he wanted to put something on it, but I guess at that time he knew of some expansion program that was going on, and he said that he would offer me fourteen thousand dollars, or fourteen thousand five hundred dollars for it, if I would sell it, and give him title to it, and he would give me credit on the note.

So, I talked to Hicks about it, and we figured as long as he wanted it so bad, we could get another

(Testimony of Hans Forster.)

five hundred dollars out of him, and Hicks called him up, and I think we did. [2486]

Anyway, we turned the piece of property over to him, and he gave me credit on the note, and we finished the note off.

Mr. Moriarty: Can you fix the time?

Q. (By Mr. Griffin): Mr. Moriarty wanted to know when it was.

Mr. Moriarty: The year.

Q. (By Mr. Griffin continuing) The year?

A. I can't give a year, unless you get some documents up here so that I can look at them.

Mr. Moriarty: I understand the sale was in 1944; 1944 or 1945.

Mr. Griffin: This would be in 1947, for your information. That is as close as I can fix it.

(Whereupon, Mr. Moriarty and Mr. Griffin conferred.)

The Court: Is any of this conversation for the record?

Mr. Moriarty: I am trying to fix a date through the witness and Mr. Griffin has suggested it to me, but I would like it in the record.

Mr. Griffin: Let's see if we can reach it in this way: [2487]

Q. (By Mr. Griffin): Do you recall about how long you held that Re-Grade property before you sold it to Mr. Morris?

A. No, I couldn't. I just couldn't tell you. It is just guesswork. I can't tell you how long I held it. I don't think I held it very long.

(Testimony of Hans Forster.)

Mr. Griffin: Not speaking to Mr. Moriarty personally, but I will advise the Court that I have a document some place that will fix that date for you, and I will supply it.

Mr. Moriarty: Thank you, Mr. Griffin.

Mr. Griffin: You're welcome.

Q. (By Mr. Griffin): Now, at some time after acquisition was the name Daisy Ice Cream Company changed?

A. Well, it was changed just about immediately, just as soon as we started to run out of the cartons, so we wouldn't have to throw any cartons away, we moved it and called it Alpine Ice Cream.

Q. Alpine Ice Cream Company? A. Yes.

Q. And now, was there a time when you had an operation at one of your enterprises known as Arctic Gardens, Incorporated? A. Yes.

Q. Now, what was Arctic Gardens? [2488]

A. Well, we started out to try to make a combination frozen food and ice cream distribution system, and Mr. Brehm and I went into partnership to go on the deal, and as we contracted for frozen foods and started to go into distribution, we got stopped by labor unions over trying to make a combination. They told us you couldn't have frozen food on the ice cream trucks, and vice versa. So, Brehm, of course, being a customer of mine in ice cream, and at that time he was handling quite a bit of frozen food, we just had to let the frozen food deal alone. We couldn't actually go into it, what we intended to do to start out with. We had

(Testimony of Hans Forster.)

to run frozen food on an Arctic Gardens truck and Alpine Ice Cream kept on delivering ice cream with frozen food. There was no combination.

Q. Do you recall what years—in what year Arctic Gardens was incorporated?

A. No, I really don't, sir.

Q. Do you recall who the incorporators of Arctic Gardens were?

A. Well, I think Wolfstone.

Q. Leon Wolfstone?

A. Leon Wolfstone, who was Mr. Brehm's attorney, and Hicks Taylor. [2489]

Q. Do you know whether you were an incorporator or not? A. I don't think I were.

Q. And was Mr. Taylor secretary and treasurer? A. Yes, I am quite sure of it.

Q. Eventually, did you acquire all of the stock in Arctic Gardens?

A. That is right; we eventually didn't go so good. We got took in the down-draft on the deal, and at the same time, Brehm was closing his stores, so he was ready to get out, and so was I, the minute we had a chance to sell our frozen food products, and I took over, in balance of it, the truck and some of the cabinets and took over the corporation and bought Brehm's interest out.

Q. Did you have anything to do with the corporate books or records?

A. No, I never seen them.

Q. Who set up the bookkeeping system for Arctic Gardens, Incorporated?

(Testimony of Hans Forster.)

A. Well, Hicks Taylor didn't only set it up, but he kept the whole bookkeeping set-up, whatever there was to keep.

Q. Do you know what there was to keep?

A. No. [2490]

Q. Did you ever see any of it prior to this trial?

A. I think he sent us some profit and loss statement.

Q. Yes. A. He talked to me about it.

Q. We are talking about books.

A. I never seen any part of the books, no.

Q. Now, in 1949, was the name of the Arctic Gardens formally changed to Alpine Ice Cream Company? A. That is right.

Q. And who did that? That is, the book work of the changeover of names and so forth?

A. Hicks Taylor.

Q. Did you have any lawyer in that connection?

A. I don't know if he got any advice from Jones and Bronson, or not. He conferred on those things with Jones and Bronson direct.

Q. And this is the same Alpine Ice Cream Company change of name from Arctic Gardens that took over Daisy Ice Cream Company, is that correct? A. That is right.

Q. Now, I think you referred—did you have an enterprise, one of your enterprises, eventually known as Apex Dairy, Incorporated? [2491]

A. Well, eventually known as Apex Farms.

Q. Well, let's go back a little further. It was originally known as the Blue Ribbon Dairy?

(Testimony of Hans Forster.)

A. There was two different dairies. One was Blue Ribbon Producers' Dairy with the Blue Ribbon Brand, and one was Apex Dairy.

Q. And did you acquire those businesses?

A. That is right.

Mr. Moriarty: The time?

A. I acquired a certain interest in it.

Mr. Moriarty: May I ask that the date be fixed, your Honor?

The Court: Oh, yes.

Q. (By Mr. Griffin): Can you fix the time, that is, the year for Mr. Moriarty?

A. I think it was 1945.

Mr. Moriarty: Is he referring to Apex Farms, Mr. Griffin?

Mr. Griffin: Yes.

Q. (By Mr. Griffin): What was the business of the Apex Dairy, Incorporated?

A. It was straight fresh milk distribution.

Q. Sir?

A. Just fresh milk distribution: pasteurizing and [2492] fresh milk and cream.

Q. And what of the Blue Ribbon Dairy?

A. The Blue Ribbon Dairy was the same.

Q. And then were those two merged?

A. Yes, Blue Ribbon was in a leased building and that was for sale first. They didn't own their own building, and Apex Dairy owned their own building, so the proposition was to try and get Blue Ribbon over to Apex and make it Apex Farm.

(Testimony of Hans Forster.)

Q. And who handled the acquisition of those properties?

A. Well, I think Mr. Grill of Jones and Bronson handled it, and Hicks Taylor handled the book part, and handled the details of the transaction.

Q. Do you know who the officers were of Apex Dairy after you acquired your interest?

A. Well, you mean Apex Farms?

Q. No, I am speaking of, at the present time of Apex Dairy.

A. Well, that was before I bought in at Apex Dairy. Mr. Govan was president.

Q. Pardon?

A. Mr. Govan of Apex Dairy.

Q. And that name was changed to Apex Farms, Incorporated? [2493]

A. That is right.

Q. After the original Blue Ribbon and Apex Dairy, Incorporated, and the change of name to Apex Farms, Incorporated, did Taylor become secretary-treasurer of that corporation?

A. That is right.

Q. And who kept the corporate records, if there were any, so far as you know, of——

A. (Interposing) Well, I think Hicks Taylor kept the corporate records, except Mr. Keck was office manager, and I think he kept the books.

I don't know which part, which one, he went by, by Apex office was an office under Mr. Taylor's supervision.

Q. When I refer to the corporate records, do

(Testimony of Hans Forster.)

you understand what I am referring to as distinguished from the bookkeeping books?

A. Well, what is it?

Q. I just wondered if you knew?

Did you eventually acquire full ownership of Apex Farms, Incorporated?

A. Acquired full ownership in order to make my sale. I couldn't make any sale, if I didn't acquire full ownership. That was part of the deal that had to be made, or I couldn't make the sale to Consolidated [2494] Dairy Products.

Q. You are referring to the eventual liquidation sale of your assets? A. That is right.

Q. During the time that you were operating, or acquired your interest in Apex Farms, Incorporated, what was the business of Apex Farms in your general picture?

A. It was a general fresh milk and cream distribution.

Q. Was it also one of the principal outlets for Finstad and Utgard?

A. That is right. Instead of the milk going from Finstad and Utgard to Alpine, it went to Apex Farms.

Q. Did you have any idea of what this business situation of yours, as an individual, buying and selling to your various corporations, and those corporations selling to you, meant?

A. Well, I felt it was going ahead, if something looked good, and Hicks figured it was all right and

(Testimony of Hans Forster.)

we went on and opened it. I don't know what you mean "if I knew."

Q. Did you appreciate that on one hand as an individual, you were selling to a corporation [2495] that you owned all the stock of, and on the other hand, the corporation selling in place——

Mr. Moriarty: (Interposing) Objection.

A. It never entered my head.

The Court: The question undoubtedly is leading. Do you not agree?

Mr. Moriarty: Yes.

Q. (By Mr. Griffin): Did you have any appreciation or understanding of your financial situation insofar as was involved the matter of your buying or selling as an individual to these corporations, and your enterprises or these corporations on the one hand, or the other hand, buying and selling from you as an individual?

Mr. Moriarty: Object to the form of the question.

The Court: The question is, did he have an understanding?

Mr. Griffin: Yes.

Mr. Moriarty: It can be answered "yes" or "no."

The Court: It may be answered "yes" or "no," I assume.

Mr. Griffin: That is what I am calling for.

The Court: Do you have an understanding, Mr. Forster? [2496]

The Witness: Well, I don't know. It seems to

(Testimony of Hans Forster.)

twist around. It was all right, the first time, so that I can answer it, and now I can't.

The Court: The question now is: Did you understand the effect of these transactions legally?

The Witness: No, I didn't. So far as I was concerned, Hicks Taylor knew about every transaction I made financially, in business, and to me, that was good enough. He is the fellow that I figured knew about the whole situation. And he is the fellow that conferred with the attorneys; if he wanted any legal advice, I am sure he got it.

Mr. Moriarty: May I suggest it is hardly responsive?

The Witness: Oh, well.

The Court: He said "no," and this is explanation. I think it can stand.

Q. (By Mr. Griffin): Going back to Renton Ice and Ice Cream Company,—by the way, to effect the incorporation of Renton Ice and Ice Cream Company, did you have a lawyer representing you in that matter of the incorporation?

A. Well, I think Fred Wettrick handled it, but Ray Schneider—I think he was a fraternity brother of his, so—— [2497]

The Court: (Interposing) Is this Apex Farms?

Mr. Griffin: No, I went back to Renton Ice and Ice Cream on this question, if the Court please.

The Witness: No, it is Renton Ice and Ice Cream.

Q. (By Mr. Griffin): Then, prior to Fred Wettrick's employment as a lawyer to incorporate Ren-

(Testimony of Hans Forster.)

ton Ice and Ice Cream Company, did you have any business contacts with any lawyer?

A. I think Fred Wettrick done some collection work for me.

Q. And going back to Fred Wettrick doing collection work for you, is that your first business contact with any lawyers in this community?

Mr. Moriarty: May I suggest a time be fixed when he met Fred Wettrick?

Right now, it extends over a period of thirty years.

Mr. Griffin: Certainly.

Q. (By Mr. Griffin): Will you tell the Jury and the Court and Counsel when you first met Fred Wettrick and the occasion of that meeting, and what each of you were doing? [2498]

Mr. Moriarty: Tell me all of that.

A. I can definitely mention the time that it was when I acquired the Falls City Cheese Factory because Mr. Wettrick was representing Ernest Andres and Andres was in Ketchikan, and he moved up with his brother, and they bought the same business back that they originally sold in 1922 and 1923 and Fred Wettrick represented Andres. That is when I first met Fred Wettrick. That must have been in about 1927.

Q. Did you both belong to the same Swiss Singing Society?

A. Well, we belonged to the same society. He wasn't singing, but I was.

Q. But was your only employment of Mr. Wet-

(Testimony of Hans Forster.)

trick prior to the matter of this incorporation in the matter of collections?

A. So far as I know, yes. I don't think I ever employed anybody else.

Q. In connection with Renton Ice and Ice Cream Company, was there another acquisition of some kind of the Hub Drug Company in Renton?

A. Yes. Ray Schneider—I don't know what year it was, but anyway, he came to me and he said that Hub City Drug was for sale, and him and John Dobson was looking at it, and they wondered if I should go [2499] into it. I said "I don't know anything about the drug business," but Ray Schneider, being a former pharmacist, he knew all about it, or he should have, so I okehed the O.K. to go ahead and buy two-thirds interest in it, so that Mrs. Basket or Mr. Basket for the Renton Ice Cream and John Dobson had the one-third.

Q. Did you consult with Mr. Taylor before you went in that matter?

A. Yes, I am positive we talked about it. He is the one that handled the books afterwards.

* * * * * [2500]

HANS FORSTER

upon being recalled as a witness for and on behalf of the Defendant Forster, and having been previously duly sworn. testified as follows:

Direct Examination—(Continued)

Q. (By Mr. Griffin): Mr. Forster, I think as

(Testimony of Hans Forster.)

of Friday you had acquired the various enterprises that are involved here.

Now, without any detail, did you, from the time that you started your operation in Issaquah acquire from time to time other run-down dairy operations that you took into the enterprise?

A. That is right.

Q. I do not care what they were.

A. We took over—I would say that is what made up Alpine Dairy at that time, those dairies, that is, Melrose, Meadowland, Green Pastures, Grif-fith's Dairy—that is what actually over those years built up the Alpine Dairy.

Q. Now, that you have acquired those, the dairies and these enterprises here, will you briefly state to the Jury what your operation was then during 1945 and in 1949? That is, what was your dairy—milk— [2509] operation, briefly?

A. Of course, Issaquah Creamery was the manufacturing plant. We, out at Issaquah, we didn't do very much wholesaling. We served some of the accounts, like I mentioned before, Horluck's Ice Cream, with condensed whole, and cream, and skim and Hi-Grade Dairy, the different operations, but most of the products that was manufactured at Issaquah Creamery, like butter, ice cream mix, cottage cheese, evaporated milk, was sold to our own affiliates either that I owned outright, or that I had a certain interest in.

We,—during the summer months, probably—naturally, during the flush season—we took in prob-

(Testimony of Hans Forster.)

ably 250,000 pounds of milk a day, and the first part went into cottage cheese, and the second most important thing was ice cream milk and then third, was evaporated in bulk in ten-gallon cans. We never did get it in small ones. We put out canned chocolate milk, Alpine Good Joe, and then, if there was any milk left over that we couldn't use in those propositions, we made butter out of the fat, and powder out of the skim milk.

That was the operation, and from there on, we sold, for instance, Alpine bought all of the cottage cheese from us, and bought the butter and skim milk and [2510] bought our cream.

Of course, we wasn't doing any operating in all those plants. All the separating was done for either commercial cream, or whipping cream was done at Issaquah.

Apex Farms bought the same products from Issaquah Creamery as Alpine did.

Puyallup Creamery bought cottage cheese and bought our ice cream mix.

Renton bought our ice cream mix, and they froze their own ice cream, until, maybe, 1949 the switch was made by either 1949 or 1950 and we started to freeze after we built the new ice cream plant on Rainier and we froze the ice cream, but before that time, we sold the liquid mix and they made the ice cream themselves.

Alpine Ice Cream, we sold them all the ice cream mix manufactured at Issaquah.

So far as Finstad and Utgard is concerned. they

(Testimony of Hans Forster.)

made—that was in the same kind of a business, except all they could do was just to make cottage cheese and ice cream mix, and send the rest of the Grade-A down to us, and for awhile we handled it at Alpine, and after we bought Apex Farms, Apex Farms took over production of Grade-A milk, and if they had an over-production [2511] of manufacturing milk, we brought it into Issaquah, and made butter out of it.

Q. In the milk industry, you spoke of a flush season. What do you mean by that?

A. Well, the flush season runs between, I would say, April 1st and August 1st. It is not quite as bad any more now as it was probably during the middle 40's or later 40's, but at that time, the production was just about doubled.

If a fellow shipped 100 gallons of milk in January and February during the flush period he would ship twice as much.

They have done a lot of work to have some fall freshened cows rather than spring freshened, but in our plants, in the spring period, we ran between 600 and 650 thousand pounds of milk in the flush period, and it would go to a quarter of a million, about 250 thousand, in the winter months.

Q. Did you have any problem in being able to take all of the products of your producers, your farmers?

A. Well, yes; we had quite a problem of trying to find markets. Of course, we had two types of milk. One was Grade-A, which went into fresh

(Testimony of Hans Forster.)

milk distribution and then the manufacturing milk, but during the flush period, we had probably half of our Grade-A milk that [2512] couldn't be used in the bottle because of distribution in fresh milk probably doesn't vary over five percent during the twelve months' period.

I think we probably sell probably more milk during the winter months when schools are on then we do in the spring when it is just the opposite, when the cow is coming fresh.

So, we had a lot of Grade-A milk that had to go into manufacturing channels still today.

Q. I am not interested in the details, but did you, in your operation, have to make arrangements with the producers so that you had to take their output, whether flush or not?

A. That is right. When you took a producer on—it was especially so in 65 percent independent—when you had an independent producer—because he started to double his production in the spring. You couldn't cut him off. We had to have facilities to handle it, and that is why powdered and butter, for instance, when the flush came along, we couldn't sell it on the open market, and it was sold to the Government.

Q. Who handled the producers in making the original set-up whereby you did obtain their entire output? [2513]

A. I made all the original arrangements for to buy the milk from the producers for all the plants, not only for Alpine and Issaquah, but Apex

(Testimony of Hans Forster.)

Farms and Conway. I made arrangements with the independent producers we had, and with the co-operatives with the contracts or purchasing from Consolidated.

Q. Who handled your chief customers?

A. The chief sales, large customers, was all handled by myself. I had a sales staff, wholesale salesmen, at Rainier Plant.

At Alpine and Apex Farms, they was mostly retail so we had a retail salesman, but I had charge of all the sales of all the organization.

Q. Did you have labor problems over the years?

A. Yes.

Mr. Moriarty: This might be immaterial, if your Honor please.

The Court: It seems to be immaterial.

Mr. Griffin: I think there is a very direct purpose to the action here, if the Court please.

Mr. Moriarty: If counsel makes that statement, I will withdraw my objection.

Q. (By Mr. Griffin): I do not want the details, but who handled the labor relations? [2514]

A. I—well, not only for our own company, handled all the labor relations, but for several years, I was Chairman of the Labor Relations Committee for the Seattle Milk Dealers Association. And I served on the committee every year. In other words, I contracted—we probably had seven or eight different contracts on the A. F. of L., of course, but between the milk wagon drivers and the ice cream drivers and the inside workers, and the office work-

(Testimony of Hans Forster.)

ers and all unions, we had different contracts with different business agents and we had individual contracts to handle.

Q. What were you—what was your working day from the time you started at Issaquah for the next following, almost twenty years, seventeen years?

A. Well, at the time I started in Issaquah, in about 1928 or 1929, I never had a vacation until 1937, when Mrs. Forster and I went to—went to Alaska.

Q. We will come to that in a moment, but irrespective of vacation, did you work a six-day week or seven-day week, or what was your work?

A. I worked a seven-day week, and thirty days a month, and 365 days out of the year.

Q. And did you, during that period of time, while [2515] you were doing this work, ever examine any of the minute books or the corporate records, or the books of account of any of these outfits?

A. No, I never did. I never looked at the book-keeping part or any of the corporate records.

Q. If you had had the—if you had had an understanding if you looked at them, would you have had time to do it, considering the occupation you were in?

Mr. Moriarty: Just a moment. Immaterial speculative.

Mr. Griffin: I will withdraw the question.

Mr. Moriarty: I move the answer be stricken.

The Court: There was no answer as yet.

(Testimony of Hans Forster.)

Mr. Moriarty: There wasn't?

Q. (By Mr. Griffin): Did you endeavor to keep track of your general business operations, however?

A. Well——

Q. (Interposing) You can answer that one "yes" or "no," if you will, Mr. Forster?

A. I definitely did. I think I ran the different enterprises, everything except the financial end.

Q. All right; now—and you did make money, didn't you?

A. Well, I figured I made money, and the way it looks, I made more money than I thought we did.

Q. Will you tell the Jury how your own mind operated, as to whether you were making or losing money as you operated these enterprises? How you did your own judging of it?

A. Well, the first thing, of course, we watched the buying prices that we paid the producers, then compared that with my sales, and I knew what my labor cost was, because I handled the labor negotiations myself, and I knew how much stuff we were running through our plants, and I knew how many pounds of cheese I got out of 100 pounds of milk, and I knew what the overrun was in the butter, and from there on, I made my own calculation, where the profit should be, and it actually never varied too much, from the profit and loss statement that Mr. Taylor gave me on the end of the month.

We was fairly close with my calculation.

For instance, if I took 80 pounds of fat out, I

(Testimony of Hans Forster.)

had to get 100 pounds of butter. And on cottage cheese, we knew what the yield was on 15 [2517] pounds of cottage cheese curd. I knew what I got, first, on 3.5 or 3.6 milk.

I had to get 10 pound yield, 10 pounds of American or Cheddar Cheese from 100 pounds, if it was 3.5 or 3.6 butter yield. That is the way I calculated my different operations to see if we was making any money.

Q. Did you have any particular division of time as between these enterprises, these different enterprises?

A. Well, I just couldn't—it was impossible for me to keep a schedule, of course. I lived in Issaquah, and still live there, and I started out at the Issaquah Creamery. I waited until the milk was distributed and if there was something out in the plant every morning I went out to the plant and talked to the buttermaker and the cheesemaker, and if there was a special problem, stayed there maybe an hour or an hour and a half and then we get the orders in from the different plants for that day's delivery of the products that those plants took, and while the orders came in, I talked to the plant manager, and plant superintendents, and asked if there was anything they wanted to talk to me about, or if I should come out to their place, and then we had labor meetings, so I [2518] actually never had a direct schedule, except I tried to be at Issaquah every morning, and not only six days, but seven days a week.

(Testimony of Hans Forster.)

I spent hours and sometimes Sunday morning, especially during the flush period when we ran day and night, in order to get rid of the milk.

Q. Did you spend any time at Finstad and Utgard and Simonson and Forster?

A. Yes, I tried to set that time at the time that Mr. Taylor went up to Finstad and Utgard to go over the books, and then I would pick Mr. Taylor up here in Seattle, and him and I drove up there, and then I talked to the plant superintendent while I was up at the plant and go out to the plant with him and look at the cottage cheese production and talk over his buying problem with the producers in Skagit and Snohomish County and probably once in a while, I will probably go up in between or he will have a chance to come down, and we talk the problems over.

At times, if he had any kind of difficulty with producers, I go up there and we make a date, and go out and talk to some of the farmers up in Skagit.

Q. Would that be true of other plants, like Simonson and Forster and Renton?

A. Well, Renton didn't have any producers, but I [2519] would stop there on the way back from Alpine to talk over the operation with Mr. Schneider and Mr. Basket, while he was alive, and when he wasn't, I talked it over with Mr. Schneider.

And, in reverse, if I have something on in the afternoon, I start out from Issaquah by way of Renton and stop for one-half hour.

(Testimony of Hans Forster.)

Q. By the way, do you still live in the same house that you first started in up there?

A. That is right, yes.

Q. Now, before I go into certain specific items, of what organizations are you a member?

Mr. Moriarty: Objected to as immaterial.

The Court: Objection sustained.

Mr. Griffin: The Government has introduced a portion of them by those exhibits, if the Court please. I think I am entitled to show his affiliations and his organizations in the community in which he lives as part of his very being and living.

Mr. Moriarty: We will withdraw the objection.

The Court: Objection is withdrawn. You may answer.

A. I am a charter member, and past president of Kiwanis Club in Issaquah, and a member of the Issaquah Chamber of Commerce, and its first president. I am past [2520] commissioner of Boy Scouts of Snoqualmie Valley District, and I am still on their committee.

I belong to the Issaquah Community Church. I am a Director of Washington State Dairy Council. I am on the Board of Directors of Washington State Dairy Foundation.

I am a director of the Seattle Dairy Foundation.

I am with the Northwest and Regional Milk Industry Foundation, as a director. My second term now is up. That is my eighth year. It will be up this year.

I belong to Masonic Lodge, the Blue Lodge, in

(Testimony of Hans Forster.)

Issaquah, to the Renton Chapter of Royal Arch Masons and to the Seattle Commandery No. 2 of the Nile Temple and belong to the Shrine.

Q. How about the school work?

A. I served a second term on District 411 as School Director, right now, and I think I am on my sixth or seventh year as School Director.

Q. Without detail, again, in regard to the State and National Dairy organizations, were you functioning in those organizations during the years 1945 to 1949?

A. Yes—I—the National organization, I belong to the—I am on the Committee of Producer [2521] Relations for the National set-up, Milk Industry Foundation, consisting of milk dealers in the United States and Canada, and we have got some members in New Zealand and some in England.

Q. Without detail, did that sort of work take a substantial portion of your time?

A. Yes, it took a lot of time. We have meetings at least one-half dozen times a year, and most were held in Washington, D.C. That is where their headquarters are for the Milk Industry Foundation, and we worked very closely with National Milk Producers Federation.

Mr. Griffin: May I have 63, 64 and 65, please?

(Whereupon, Exhibits were handed to Mr.

Griffin by the Clerk.)

Q. (By Mr. Griffin): I hand you Exhibit 65, introduced by the Government, being a check to the Community Chest for two dollars. Have you

(Testimony of Hans Forster.)

any—do you know what that check is? Or have any recollection?

A. Yes, I would think it was a check made out to Community Chest for one of the lunches that was held.

Q. Did you have any connection personally with the [2522] Community Chest during these years?

A. I have been director and still am of the Seattle-King County Community Chest, and I am on the Board of Directors of the newly organized—well, it is an offspring of the Community Chest.

Q. When did you become—

A. (Interposing and continuing) —Seattle Good Neighbor Fund.

I served as General for King County outside of Seattle for the drives in 1949 and 1950 to handle all the communities outside of Seattle for King County.

Q. And handing you Exhibit 64, which is a check to Puget Sound Products from the Issaquah Creamery, are you familiar with that transaction?

A. Yes.

Q. What was it?

A. Mr. Grill, of Jones and Bronson, told me sometime in the middle 40's when he was our attorney that it would be a good investment in this Puget Sound Products operation, and wondered if I—

Mr. Moriarty: (Interposing) I suggest that this may be hearsay.

(Testimony of Hans Forster.)

I make the objection as to hearsay, if your Honor please.

Mr. Griffin: Yes, I agree with that. [2523]

Q. (By Mr. Griffin): This Puget Sound Products is that the matter in which a witness by the name of Goss testified here?

A. That is right, yes.

Q. Did you—did somebody then—Puget Sound Products sell you an interest in what they claimed was one of their patents, or something?

A. That is right, yes; five thousand dollars.

Q. And did this check that I just showed you, without any detail, involve the final handling of that transaction?

A. That is right. It was the last payment.

Mr. Moriarty: I suggest that the question has been answered.

The Court: Well, he may explain, if he wishes.

Mr. Griffin: I am satisfied.

Q. (By Mr. Griffin): It involved the last detail of the transaction? A. That is right.

Q. Now, you had a bank account in the Central National Bank of Commerce, Central Branch, and you also had one out in the Greenwood District. Will you state [2524] to the Jury why, in the early 1940's, down to 1945, you had some small accounts in three or four of these banks where these people first testified in this case, about three months ago?

A. Well, the account in the National Bank of Commerce:

I was interested in the Meadowland Dairy before

(Testimony of Hans Forster.)

I finally took it over, when they couldn't make it go, and they banked at the National Bank of Commerce on Olive Way, and that is the reason I established a savings account there, because I was a stockholder and interested in the Meadowland Dairy, and that is where we done our banking.

Out in the Greenwood Bank, I had to take over a contract from one of our customers and he was banking at the Greenwood Bank, and he said he would like to make his payments at the Greenwood Bank to pay off his contract, so I left the contract there at the Greenwood Bank, at his request, and told him to go ahead and put it in this—opened the savings account up there and put it in the savings account.

Q. Eventually—I will reach this later—did your banking consolidate in the Peoples and in the Washington State Bank at Issaquah?

A. That is right. As those loose ends started to [2525] pull together and put them all in the Peoples National Bank here on Fourth Avenue and the Washington State Bank at Issaquah.

Mr. Griffin: 137 and 140, please.

(Whereupon, exhibits were handed to Mr. Griffin by the Clerk.)

Q. (By Mr. Griffin): Now, referring to exhibits 137 and 140,—137 is a ledger sheet of Hans Forster, Issaquah Creamery-Alpine Dairy. It says Seattle, with Jordan and Company. I am trying to find the name Jordan on here.

(Testimony of Hans Forster.)

Certain checks were introduced in evidence, Exhibits 140, 139 and 138 to Jordan and Company.

Did you have a trading account in securities with Jordan and Company? A. Yes.

Q. Did anyone introduce you to Mr. Jordan in the first instance? A. Hicks Taylor.

Mr. Moriarty: Who?

The Witness: Hicks Taylor.

Q. (By Mr. Griffin): And for what purpose?

A. Well, he—Mr. Taylor—told me that he was trading [2526] with Mr. Jordan, and he said he was doing a very good job for him, and he thought it might be a good idea for me to buy a few shares of stock, and put them away and forget them.

Q. Did he advise you what to buy—Mr. Taylor?

A. He told me what he was buying,—and he told me that is the stock that was good.

Q. And did you then trade for a time in securities with Jordan and Company?

That is, buy and sell? A. Yes.

Q. Do you know how—if you had any dividends from those securities, do you know how they reached your income tax returns, if they did?

A. Yes, Mr. Jordan gave Mr. Taylor a breakdown every year of what I had, and what dividends there were. In fact, I don't think I even got a copy of it. He sent it direct to Mr. Taylor.

Mr. Griffin: Let me see 160, please, and 170; 160 to 170.

I might as well use those.

(Testimony of Hans Forster.)

would have to put it in escrow up at Peoples Bank. He was banking there, and I think they probably still do, Time Oil, and so were we, and we both went up and I signed the contract for one and one-half cents, and we put the contract in escrow, and the escrow agreement was that neither one could take the contract out unless the other one was there to witness it, so that we could tear it up, I suppose, and he said one condition was that he—that the discount would have to be on a cash basis. He said he couldn't go ahead and give it to us as a check or on a rebate on the statement. So, we made the deal, and that is where the Time Oil discount monies come from. He tried to make the same kind of deal out of Apex Farms, but out at Apex, we [2530] had quite a bit of business with Signal Oil.

Some of the Signal Oil tankers that came up from California was buying milk and cream from us, and I told Mr. Keck about it, and we figured the amount of gasoline used, and the amount of business used by Signal Oil, and figure it wasn't profit. He was still getting one cent from Signal, and the one-half cent deal, we didn't make the break, and that is the reason Apex Farms didn't change, and kept on buying from Signal Oil.

Q. Was it you or Mr. Green that insisted that the rebate had to be in cash?

A. Mr. Green definitely insisted on it. He said that is the only way he could give us one and one-half cents, it had to be cash basis.

No. 14656

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for the Ninth Circuit

HANS FORSTER, Appellant,
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Transcript of Record
(In Six Volumes)
VOLUME III.
(Pages 937 to 1400, inclusive)

Appeal from the United States District Court for the Western
District of Washington, Northern Division

FILED

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(Testimony of Hans Forster.)

Q. And was Mr. Taylor familiar with that discount?

A. I told Mr. Taylor about it, yes.

Mr. Griffin: Let me see 179 and 181 and 182 and 183, please.

(Whereupon, exhibits were handed to Mr.

Griffin by the Clerk.) [2531]

Q. (By Mr. Griffin): There has been testimony here about basketball teams and football teams. What connection did your Issaquah Dairy or Alpine Dairy have with either football or basketball?

A. I sponsored the 160-pound football team in Issaquah that consisted of boys that didn't go to college but came out of high school and they still wanted to play football, and we organized, was one of the organizers, of a league between Enumclaw, Auburn and Kent, and Issaquah and Renton, and later on, I think White River came in, and Rainier Beach, and we sponsored that team in connection with the Fire Department for awhile, and afterwards, I paid the whole bill for five or six years until they started to bring in University graduates and broke it up for the kids. That is actually what happened.

As far as basketball is concerned, I sponsored basketball teams in the Commercial League at Issaquah, and here in Seattle, I have sponsored——

Mr. Moriarty: (Interposing) Just a moment. I don't think what he did in Seattle is material.

Mr. Griffin: I asked about Alpine, as well.

Mr. Moriarty: I object to it as immaterial.

(Testimony of Hans Forster.)

The Court: Objection overruled. I believe it is covered in some of the exhibits. [2532]

A. (Continuing) I sponsored the Alpine Dairy Basketball Team since 1934 when we had the first team in the Commercial League, and we have been having teams for 20 years, and now, of course, they call it the Northwest Basketball League.

Q. (By Mr. Griffin): In this group of checks, Exhibit 67, is a check dated February 25, 1946, Alpine Dairy to Northwest Basketball—Northwest Basketball—I don't know—is that your writing?

A. Yes, Northwest Basketball Tournament.

Q. Northwest Basketball Tournament, \$100. Is that one of the matters you have just been referring to?

A. Yes, that was the play-off out at the University of Washington, that each team had to put up \$100 to guarantee that they would be there for the play-off and that came back when the team showed up and the Tournament was over.

Q. Exhibit 179 is a ledger sheet of Klopfenstein's which shows the—what you paid for shorts and ties and wearing apparel.

Have you examined—have you examined this ledger sheet as to whether or not there are on there articles for these players?

A. I never looked at it before, so I actually [2533] couldn't tell you.

Q. Did you buy anything from any—from Klopfenstein's, wearing apparel, for these teams, or players?

(Testimony of Hans Forster.)

A. That is right. We—not only that, but we bought some of them for presents at the end of the season, and when the boys got through playing, we always tried to give them something for Christmas, and during the Christmas season, and part of the Klopfenstein's bill, just like the jewelry bill, went for presents to the ball players, and for the help when they got married, and wedding presents.

The same way with the customers.

Q. Was that true of the two jewelry bills here as well?

A. That is right. I don't know which year it was, but one year, after the season, I bought them all a wristwatch, and had their names engraved to all the players and the coach, and I bought some luggage for Tom Werner, who has been the coach all those years.

It is an amateur league. The boys don't get no pay. They do it for the fun of it, and at the end of the season, I try to give them a party and a few small presents, and put their names on them.

Just a little bit of a remembrance that they played ball.

Q. Now, during these years 1945 to 1949, were you a member of the Washington Athletic Club?

A. Yes.

Q. And did—was that a business membership?

A. That is right, yes. Non-residence membership for living at Issaquah.

Q. And did you consider it a part of your business? A. Definitely, yes.

(Testimony of Hans Forster.)

Q. Do you remember when your daughter got married? A. Yes, very well.

Q. There has been testimony here, and I refer to Exhibit 182, that at that time——

Mr. Griffin: Strike that, first.

Q. (By Mr. Griffin continuing): You will remember, do you, during the trial that we went through one of these ledgers, or journals, whichever it was, for a full, I think, three-year period showing the payment of dues to the Washington Athletic Club as a business expense. [2535]

Now, there is in evidence here that at the time your daughter was married, you asked for a separate bill from the Washington Athletic Club?

A. That is right.

Q. Why?

A. Because I didn't figure it was a business expense.

Q. And that expense was represented, was it not, by Exhibit 182, this bill and check?

A. That is right.

Q. Did you have anything to do personally with the payment of it, when the bill came in then?

A. Well, it looks like I signed that check.

Q. Did you know it was not charged to your personal account?

A. No, I don't know of any checks, how they were charged, after that was made out.

Q. Now, you mentioned, I think, that you made—you took your vacation, and in 1947, was it, that you went back?

(Testimony of Hans Forster.)

A. No, 1937, we went to Alaska.

Q. 1937, you went to Alaska? All right.

Now, how many—have you made trips back and forth to Switzerland? A. Yes. [2536]

Q. When was the first one?

A. The first one was in 1930.

Q. And the next one?

A. The next one was in 1939.

Q. And then the next one?

A. The next one was in 1947.

Q. Now, in 1947, did you buy a car before you went over there?

A. That is right; I bought a Ford.

Q. A Ford car?

A. A Ford convertible.

Q. And what kind of cars did you generally drive until you got a heavy car?

A. Well, I had a Chevrolet, first, and then I had a Ford Coupe, until I had a wreck with it in 1947 and broke my back, or my neck.

Q. Oh—was it on medical advice that you bought your first heavy car, getting out from the Fords and Chevrolet class after you broke your neck?

A. That is right. I broke my neck in 1947 on the Tacoma Highway.

Q. I don't care about the details. Were you—for how many years were you in a cast with that neck?

A. Well, I was in a cast——

Mr. Moriarty: (Interposing) I will object, if [2537] you don't care about the detail.

Mr. Griffin: I don't care about the detail.

(Testimony of Hans Forster.)

Mr. Moriarty: I will object to this as——

The Court: Objection sustained.

Q. (By Mr. Griffin): Was it a result of having to wear a cast for years that you bought a heavy car?

Mr. Moriarty: Objected to as immaterial.

A. Yes.

The Court: Well, the question is answered.

Q. (By Mr. Griffin): Now, on this 1947 Switzerland—going to Switzerland,—did you take your family? A. I took my two daughters.

Q. And was that a pleasure trip, a business trip, or both?

A. It was a combination business and pleasure trip. I still have my father and mother in Switzerland.

Q. And what would going to Switzerland have to do with any of your business here?

A. Well, the latter part of 1946, I got a call from Mr. Schaubling, Swiss Counsel for the Northwest District, and he said he had an inquiry [2538] from Swiss cheese brokers in Switzerland to try to find himself a broker over here to handle the Swiss cheese in the Northwest, and he said he gave them my name and address, and wondered if I would want to correspond with them.

And they wrote me about it and they said they was looking for not only the Northwest, but West Coast representative. All during the war years they didn't import any Swiss cheese from Switzerland and naturally, they lost the connections, and they

(Testimony of Hans Forster.)

tried to make new connections again, and so I corresponded with them and I went out, and when I went out, in 1947, I looked them up and went over the proposition that they had. And I never took it on because it actually didn't fit right in with our fresh milk and ice cream business.

Q. Did you use on your—on that trip, did you use traveler's checks in part?

A. I would think so, yes.

Q. Do you know how they were charged on the books? A. No, I don't.

Q. Or to which company? A. No.

Q. Did Mr. Taylor know that you made that [2539] trip? A. Yes, very much.

Q. Who was left in charge of the overall operation when you made that trip?

A. Mr. Taylor had power of attorney, and he was in full charge of all details of the set-up when I left, just like he took my place when I was gone.

Q. Exhibit 66 and 67, there are, I believe, two checks to the school district for \$50 each. Do you know what they are? What they were for?

A. They are accompanying bids when we bid for milk on the Seattle School District No. 1. We had to accompany the bid with a \$50 check. I think that is what it is, \$50.

Q. That is, by bid, you mean to bid for that school business? A. Yes.

Q. In 67-A there is a check to Washington Concessions for \$100. Is that of the same nature or tenor?

(Testimony of Hans Forster.)

A. I can't even remember what the Washington Concessions was. I really can't tell you.

Q. There was one 67-A, Milky Way, do you know what that was?

A. I haven't got the slightest idea. [2540]

Q. By the way, returning to Finstad and Utgard for a moment, in this transaction you testified to, did you ever meet Mrs. Finstad personally?

A. Well, I can't remember her, but since then, I talked to Mr. Egeness, and he said that I went up there with him one time. She wanted to meet me, but I—I still can't tell you what Mrs. Finstad looked like.

Q. In Mr. Eppler's testimony, he read some items of \$200 regarding the purchase of some property in Issaquah. Do you know what those items were and what property they referred to?

A. Yes. I had a fellow by the name of John Krainek, who was working in the plant for quite a number of years, and he saw a bachelor and then he started to hit the bottle quite often and we had to let him go, and after he was out for about one month and a half, or two months, he approached me at the plant and he said he was going to sell that piece of property about one block and a half below the Creamery. It is right on the highway, Sunset Highway there, and he said he had an offer of, I think it was either three thousand dollars or thirty-five hundred, and he wondered if I was in-

(Testimony of Hans Forster.)

terested in it; otherwise, he was [2541] going to sell it to Peters Real Estate, and I said if he had to sell it, we was interested in it, because we had taken up just about every foot of space that we had on the Issaquah Creamery property in making this roller powder to sell it to the Government in car-load lots by the time they came out to run samples on it and we kept running day and night and the warehouse was overloaded, and I figured on trying to build a warehouse on that piece of property.

Q. You eventually purchased it, did you?

A. That is right.

Q. And was it purchased for business purposes?

A. Oh, definitely so, yes.

Q. By the way, during these years, did you entirely rebuild the Issaquah Creamery Plant?

A. Well, I would say during the years, there is only the wall on the north end, one wall left from the original plant that was there when I came down with the Northwest Milk Condensing Company.

Mr. Griffin: It is recess time.

The Court: Ladies and Gentlemen of the Jury:

We will now take the mid-morning recess. The Court calls your attention to the admonition given on similar occasions, and asks that you heed that [2542] admonition on this occasion.

You may now be excused.

(Whereupon, the Jury retired from the courtroom.)

(Testimony of Hans Forster.)

(Whereupon, at 11:00 o'clock a.m. a recess was had in the within-entitled and numbered cause until 11:14 o'clock a.m. March 30, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated. It is stipulated that the Jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Griffin.

Q. (By Mr. Griffin): As part of this basketball-football set-up, did Thurston Dry Cleaning—did you pay for cleaning of equipment at Thurston's?

A. That is right. We had coaches, of course, that handled the teams, and when the season was over, or [2543] during the season, we told them to go ahead and take them there.

Q. For how many years was Dr. Hillary your family physician?

A. Oh, I would say 22 or 23 years.

Q. And over that period of time, have you paid him a good many fees by way of checks for services?

A. No question about it.

Q. At Issaquah, does the Issaquah Creamery have a mail box, or how was the mail handled?

A. You have to pick the mail up at the box

(Testimony of Hans Forster.)

office. There was no mail delivery so that you have a mail box.

Q. Do you have one personally——

A. (Interposing) That is right, yes.

Q. (Continuing) ——your family.

There has been introduced in evidence one check here, Exhibit 231, payable to Dr. Hillary. Have you any idea how that check got to the Creamery office in the place of yourself personally over these 22 years?

A. No, I haven't got the slightest idea.

Mr. Griffin: If I may refer to the check, if the Court please. On the face, it says Betty and [2544] Jo Anne Forster.

Q. (By Mr. Griffin): Now, you recall that Miss Neukirchen testified that certain invoices to the Renton Ice and Ice Cream Company, you asked her to give to you? A. That is right, yes.

Q. Will you explain to the Jury what that transaction was?

A. I don't recall the exact date, or when the War Food—War Food Order No. 8 went into effect, that set a quota that we got out butterfat and milk solids in ice cream, but when it went into effect, they set a base period where those figures came from, from the previous year and Issaquah Creamery, being both the ice cream mix business and the ice cream business, had two different quotas. One of them was a quota to make an ice cream mix. That part was made into ice cream.

And the other part of the mix quota was a quota

(Testimony of Hans Forster.)

that customers established that had their own ice creamery or sold at retail, that froze the mix after we made it up, and then they made ice cream in the small creameries on quotas that some dealers established that made the ice cream and took their ice cream back and sold it to grocery stores and sold it to [2545] drugstores and during the base period account bases were established. We sold mix all over the State. We sold in Walla Walla and we sold in Spokane, and we sent to Portland and to Bremerton, and we sent to Bellingham and Mt. Vernon and quite a bit to Alaska, Crystal Dairy in Ketchikan and the Juneau Dairies, and at Anchorage.

So, we had a very large ice cream mix business during the base period. And when the War started, this mix that we manufactured that went out of the State, especially up to Alaska, we had to discontinue because the boats wouldn't take anything up to Alaska except it was essential to the war effort and they didn't figure that ice cream mix was essential to the war effort, so we had this mix quota on our hands.

Usually, at that time, Renton was buying their ice cream mix, was buying in the base period their mix, from Arden Farms, and Arden Farms notified not only Renton, but the other mix accounts that if they wanted to get the quota, they would have to take most of it, and in some cases, all of it, in ice cream, they wasn't going to sell them the mix, and so Mr. Schneider talked to me about it, and if he

(Testimony of Hans Forster.)

had to buy ice cream from a wholesaler that was a competitor [2546] and then compete and sell it, it was an impossibility, and I told Mr. Schneider at that time that we was using up all our own freezing quota, but we had this mix quota that we couldn't ship to Alaska on and at that time, we made a very large effort to try to get the War Food Administration—normally, we had their consent, but we finally had to get to Washington on it.

The Renton population just about tripled over what they had and the base period was before all the influx of people that came in, like the Renton Housing Production on the hill, and we felt, as long as those people came from outside the State and made the influx, that we should get an increase in quota, freezing quota, for Renton.

We applied on it. We applied from Renton, and we applied from Issaquah Creamery. If nothing else, we figured we was entitled to freeze up this mix that was impossible to ship to Alaska, and try to use it in this area where we had influx of population.

Q. Let me stop you there for a moment.

As a result of this work, did you get the quota so that distribution could be made?

A. That is right. [2547]

Q. Was there any violation on your part at all?

A. There was never any violation so far as we was concerned.

Q. During this intervening period, you asked

(Testimony of Hans Forster.)

Miss Neukirchen, as I understand your testimony, to deliver the invoices to you, is that right?

A. That is right.

Q. Did the fact of taxes ever enter your mind in that particular at all?

A. It never entered my mind, and it never entered her mind when she talked to me about it, once or twice, and when she talked to Mr. Erickson, and Mr. Taylor told her there was nothing to worry about. Nobody mentioned any tax angle. This didn't come up. This must have been around 1945, and this didn't come up until 1950, but her—but she was worried about the quota. It didn't have anything to with the tax angle.

Q. Afraid you might be violating?

A. That is right.

Mr. Griffin: While the Court will take judicial notice of the Federal Regulations, we have a proposed instruction in this matter, and if you will mark this for identification. [2548]

The Clerk: Defendants' Exhibits A-59 and A-60 marked for identification.

(Defendants' Exhibits Nos. A-59 and A-60 marked for identification.)

Mr. Griffin: I offer these two Federal Registers, A-59 and A-60, although, as I say, your Honor would take judicial notice of the contents in any event.

Mr. Moriarty: Pardon?

Mr. Griffin: I say, I am offering them, although

(Testimony of Hans Forster.)

the Court will take judicial notice of them in any event.

Mr. Moriarty: I object to them as immaterial.

The Court: I take it, they may be immaterial, insofar as you propose to read them to the Jury?

Mr. Griffin: No.

The Court: Of just offer them as a basis for the instruction?

Mr. Griffin: On the basis of the instruction.

Mr. Moriarty: That does not make them an exhibit. They may be available to the Court.

The Court: They may be admitted for that [2549] limited purpose. It may facilitate the issue.

Is anyone else objecting?

Mr. Le Sourd: No objection.

Mr. Keesling: Will counsel indicate the section of the register if there is a sub-section number?

Mr. Griffin: On Exhibit A-59, Section D from pages 292—952 and 953; and, A-60, Section E, on page 2472.

The Court: They may be admitted then for the edification of the Court's judicial notice.

Mr. Griffin: Yes, your Honor.

The Court: I don't know just what the instruction may be, but if the Government has any idea that they do not properly set forth the regulation, then in effect, I would ask that you call it to the Court's attention.

Q. (By Mr. Griffin): Mr. Forster, Exhibit 239, a check of Arctic Gardens, or among them is a check, a group of checks of which one is—they are

(Testimony of Hans Forster.)

all Arctic Gardens checks signed by Mr. Taylor. In that group is a check for \$773.21. There has been testimony that Mr. Taylor stated to the Agent that that check was for interest.

Do you know whether it was, or not? [2550]

A. I couldn't tell you now. Maybe at that time, he told me it was.

Q. In regard to the matter of Mr. Taylor making out your income tax returns, how did—did you supply him with the items of interest that you had collected during the year?

A. I supplied him with all the items he asked me to supply him.

Q. Well, did you—I know that is the broad question, but specifically, did you supply him with the interest items?

A. Well, I gave him the interest items, for the savings account I have, because he would ask me when he came out there to Issaquah, and I took him out—up home to lunch all the time, and that is where I had the books.

Q. I will leave that. What books do you mean?

A. Savings Account Books.

Q. Your personal?

A. That I carried in Washington——

Q. (Interposing) Your personal?

A. Yes, my personal, in the Washington State Bank and Peoples National Bank, wherever I had them.

Q. And did you give him the interest items [2551] out of those books for each year then?

(Testimony of Hans Forster.)

A. Yes.

Q. And since your present accountants have gone over your income tax returns, have you found that Mr. Taylor returned all of the interest that you gave him, or not?

Mr. Moriarty: Objected to as immaterial.

Mr. Griffin: Just a moment. That certainly is not immaterial.

Mr. Moriarty: What his agents later found out.

Mr. Griffin: No, no.

Mr. Moriarty: It is hearsay.

Mr. Le Sourd: We object because it is hearsay.

The Court: The question finally was, did he return?

Mr. Griffin: Yes, that is the question.

Q. (By Mr. Griffin continuing): Did Mr. Taylor enter in these final returns the total amount of interest that you gave him?

Mr. Moriarty: On the returns now in issue?

Mr. Griffin: Yes, sir.

A. No, they told me he didn't. [2552]

Mr. Le Sourd: I withdraw my objection.

Mr. Moriarty: What they told him isn't—

The Court: The question wasn't what they told him, as I understand it.

Q. (By Mr. Griffin): Did he enter the total amount of interest that you gave him?

A. No, he didn't.

Q. And specifically, did you give him in each year the accrued interest from your book in the Washington—National Bank of Washington?

(Testimony of Hans Forster.)

A. That is right. That is where twice a year I would get the interest rate, take the book down and they write it in it, and when Mr. Taylor came up to lunch in the first part of the year, I would read it off there. He asked me for it, and I gave him the interest.

Q. You spoke about Taylor coming to lunch. What do you mean by that?

A. Well, he came out to go over the Issaquah Creamery books most of the time, and at the end of the month to go over the books for the previous month and at twelve o'clock Mrs. Forster made up a lunch and Taylor and I went up there and we had lunch with the family and then we talked about the businesses and [2553] talked about the family, and then he would go back to the Creamery probably around 1:30 or 2:00 o'clock, and work another couple of hours and take the books along and go back to town.

Q. Over how many years from the time that you first met him at the Issaquah Creamery did he customarily have lunch with you and Mrs. Forster in your home on every occasion that he came out to the Creamery?

A. Oh, I would say fifteen years, anyway.

Q. For the next fifteen years?

A. I would say maybe it was longer than that.

Q. There was testimony—you had bought a Television set, did you?

A. That is right.

(Testimony of Hans Forster.)

Q. Do you recall any conversation with Mr. Erickson about that Television set?

A. Yes, after I bought it, and it must have been a couple of weeks later when the bill came into the Creamery, and he laid it on my desk, and jokingly, I went over and he had another office, we had offices beside each other and I, I said, "You know, I think this ought to be paid by the Dairy, or by the Creamery, because the fellows working at the Creamery are going out to use it as much as I did, and my radio during the football season up at the house, and maybe the [2554] Company ought to pay for it." I just laughed about it. I mean, that is probably the only time in the whole history that I even made such a remark about any item.

Mr. Griffin: Let me see 214-A, please.

(Whereupon, exhibit was handed to Mr. Griffin by the Clerk.)

Q. (By Mr. Griffin): You have heard the testimony in this case about a check of R. L. Stephenson, \$18,859.50, have you? A. Yes.

Q. In that approximate amount. When was the first time that you ever heard of that Stephenson transaction on the books in reference to the books of the Issaquah Creamery?

A. After the investigation started and Mr. Tremper's office and accountants went through all our books, one evening, I think it must have been sometime in, probably in May of 1950, Mr. Erickson came up to the house and he told me that Mr. Gorans was down there all that day and went over

(Testimony of Hans Forster.)

some of the stuff, and he said he told Mr. Gorans——

Mr. Moriarty: This is hearsay.

I object to this as hearsay. [2555]

The Court: Are you offering it, Mr. Griffin, for any purpose?

Mr. Griffin: I am only offering it for the fact that when he, the witness, first learned about this transaction on the books.

Mr. Moriarty: That question has already been answered.

Q. (By Mr. Griffin): From whom did you learn it? A. Mr. Erickson told me.

Q. And did Mr. Erickson tell you that—inform you that prior to telling you he had had a talk with Mr. Gorans with reference——

Mr. Le Sourd: Objected to.

Mr. Moriarty: Objection.

Mr. Griffin: Just a minute. I am not asking for what was said.

Mr. Le Sourd: Objected to as hearsay.

The Court: You are just asking if he told him?

Mr. Griffin: Yes.

The Court: Objection overruled.

A. He did.

Q. (By Mr. Griffin): All right. Now, when was the first time [2556] also that you heard or learned that there had been a change in accounts payable?

I am referring to these Consolidated accounts payable that was referred to here.

A. It was the same evening.

Q. It was the same evening?

A. Yes.

(Testimony of Hans Forster.)

Q. And from whom? A. Mr. Erickson.

Q. Mr. Eppler testified that on August 15, 1951, you stated to him that you had learned—no,—not that you had learned—that you stated to him that certain accounts had not gone through the books, to-wit: casein, gasoline, and butter purchases.

Mr. Moriarty: Is that the correct date that you are referring to, 1951?

Mr. Griffin: It should be 1950, shouldn't it?

Mr. Brody: 1951.

Mr. Griffin: August 15, 1951.

Q. (By Mr. Griffin continuing): Now, did you learn that those items had not gone through the books until after your present accountants started their examination?

A. That is right; that is when I learned about it. [2557]

Q. Now, Mr. Eppler testified that on that occasion you said to him, "My accountants now say that the subsidy checks must go through the books."

Did you make any such statement?

A. No. There was no—there was no conversation on any subsidy checks.

Q. When had the subsidy checks ceased as a matter of fact, coming in at all?

A. Well, I—after that statement was made, I think we looked it up and found out they ceased in the middle of 1945, or 1946.

Q. 1945, six years before; is that right?

A. That is right.

Q. Did your salary change from time to time?

(Testimony of Hans Forster.)

A. Well, yes; I——

Mr. Moriarty: (Interposing) I think it would be immaterial except during the period of the investigation.

Mr. Griffin: That is what I—well——

The Court: (Interposing) Well, it is a preliminary question if he desires to answer it.

The Court: Did you say “yes”?

The Witness: Yes, it changed.

Q. (By Mr. Griffin): Did you have any to do with the change [2558] or from whom did you receive information your salary had been changed?

A. Hicks Taylor told me he changed it.

Mr. Moriarty: Will you tell what period in 1945 to 1949?

Q. (By Mr. Griffin): When did he tell you?

A. He told me in 1940, when Alpine Dairy was divorced from Issaquah Creamery. He said my salary had been \$24,000 a year. I never drewed that much money, but he said it would change from \$24,000 down to \$18,000 because Alpine Dairy was divorced from Issaquah Creamery.

Q. Did you have anything to do about it except Mr. Taylor told you that?

A. I didn't have anything to do about it, no.

Q. Then was that your salary after that time?

A. That is right.

The Court: This is the salary from Issaquah for——

Q. (By Mr. Griffin): Salary from——

A. (Interposing) Issaquah Creamery, yes.

(Testimony of Hans Forster.)

Q. Of Issaquah Creamery.

Did you from time to time talk with Mr. [2559] Taylor as to what you thought you were worth?

A. I don't think I ever asked him as long as I knew him.

He must have told me about it when he made statements to the bank or gave me statements to give to the bank, but I don't think we ever had a conversation to ask him how much I was worth that I can really recall anyway. I don't know why I would.

Q. Did you ever give him any statements of your own, figuring what you owned—put it that way?

A. Well, yes, on quite a few occasions during the year, I probably sat down a couple or two times a year and taking a slip of paper and marked down certain interest or certain stock that I had, and then I talked to him about it and showed it to him.

Mr. Griffin: Will you mark this photostat for identification, please?

The Clerk: Defendants' Exhibit for identification No. A-61 marked for identification.

(Defendants' Exhibit No. A-61 marked for identification.)

Mr. Griffin: I would like to have the original of this photostat. [2560]

Mr. Patten: We have no objection to the photostat. We don't have it.

Mr. Griffin: What happened to it?

Mr. Patten: We thought you had it.

(Testimony of Hans Forster.)

Mr. Griffin: Well, we are just in the position of each one thinking that. But, you saw that?

Mr. Patten: Yes, we have no objection to the photostat.

Q. (By Mr. Griffin): Handing you Exhibit A-61 for identification, I will ask you what that is?

A. That is one of the slips, similar slips, I made out for my own information, and to show it to Mr. Taylor in my own handwriting.

Q. Of your property, is that right?

A. That is right, yes.

Mr. Moriarty: And the date?

The Witness: I think that is January, 1947.

Mr. Griffin: January, 1947.

Mr. Le Sourd: We would like to see the original of this, your Honor, and will object to the photostat at this time. If the Government has the original, they can produce it.

Mr. Patten: We do not have the original. [2561] We have never seen it.

Mr. Brody: I think the original is attached to an affidavit.

Mr. Le Sourd: I would like to see the original paper, if there is such, to see how it looks.

The Court: Can we have a little more information? Is that a document kept by someone?

The Witness: Yes, I marked it down.

Mr. Griffin: We thought that the Government had the original, and——

Mr. Patten: (Interposing) No, a photostat.

Mr. Griffin: (Continuing) ——and counsel know

(Testimony of Hans Forster.)

we had the original. As between the two of us, I guess we have no original at the present time.

Mr. Moriarty: None that we know of.

Mr. Griffin: And none that we know of.

Mr. Le Sourd: If the Court please, I may say in looking at that, there is nothing on it that would indicate when it might have been written up.

The Court: There is a date on the top of it.

Mr. Le Sourd: Yes, but that could be written at any time. We would object to it without having the original, and see how the original looks [2562] and what type of paper it is on.

The Court: Does anyone know who took the photostat?

(Whereupon, Mr. Griffin conferred with Mr. Brody.)

Mr. Griffin: That is the inquiry I am just now making, if the Court please. Royal Blue Print Company, Mr. Brody says, made the photostat and this photostat was attached to an affidavit in this matter as of March 5, 1951, filed with the Government.

Mr. Moriarty: I understand the photostat is now being offered. I showed that to Mr. Griffin to show him we only had the photostat.

I don't think any reference to the affidavit at this time is proper.

Mr. Griffin: I was just explaining to the Court.

Mr. Moriarty: Excuse me.

Mr. Le Sourd: This affidavit was filed by the defendant Forster on his behalf?

Mr. Griffin: That is correct.

(Testimony of Hans Forster.)

The Court: I think I might withhold ruling on that. Do you wish to ask any questions regarding it?

Mr. Griffin: I will ask one more, if the Court please, because I didn't know there was going to [2563] be any objection.

Q. (By Mr. Griffin): You stated that Exhibit A-61 is in your own handwriting. At the top is the date January 4th——

A. (Interposing) 1947.

Q. (Continuing) ——January 1, 1947. About when did you jot down those items that are on there? A. January 1, 1947.

Q. And about when did you deliver——

Mr. Griffin: (Interposing) Well, strike that.

Q. (By Mr. Griffin continuing): Did you—what did you do with the—you said that you did that three or four times a year.

What did you do with the paper on which you jotted these down, ordinarily?

Mr. Le Sourd: Just a minute. I will object.

Mr. Griffin: I will withdraw that and ask this direct:

Q. (By Mr. Griffin continuing): Did you deliver that to Mr. Taylor?

A. I showed it to him.

Q. Do you know where the original of A-61 is [2564] at the present time?

A. I gave it to Mr. Brody.

Q. To have the photostats made, is that right?

A. That is right.

Mr. Griffin: That completes my examination.

(Testimony of Hans Forster.)

The Court: Is there objection on the identification?

Mr. Le Sourd: It still stands, your Honor.

The Court: On the original?

Mr. Le Sourd: Yes, if they have the original, I think it should be produced.

The Court: I assume, if they have the original, they will produce it.

Is that right, Mr. Griffin?

Mr. Griffin: That is right. We thought the Government had it.

The Court: I might suggest you might make some search, and if you can't find it, I am inclined to believe the Court would overrule the objection based on the representation that the original is lost.

Mr. Griffin: We will have Mr. Brody contact the photostatic establishment, but—just a second.

The Court: I will withhold the ruling until that check has been made. [2565]

(Whereupon, there was a brief pause.)

Q. (By Mr. Griffin): In these memos that you made, did you—that you wrote down yourself to show what you had and discussed with Mr. Taylor, did you include the account in the 198, National Bank of Washington?

A. Yes, I am positive I included that and Peoples Savings Account.

Q. I said National Bank of Washington.

A. Washington State Bank.

Q. Washington State Bank.

(Testimony of Hans Forster.)

Now, you established a trust for your children, did you? A. Yes.

Q. With whom did you first discuss that matter?

A. I think the first time I discussed it with anybody was with Hicks Taylor.

Q. And who—the document in evidence shows that you named Hicks Taylor as co-trustee?

A. That is right.

Q. How did you happen to do that?

A. Well, Hicks Taylor, being more familiar with my finances than anyone else, I knew is the reason I asked him about it, and he said he would be [2566] glad to do it.

Q. Prior to the—to Mr. Taylor's own Indictment, and prior hereto, who was the designated executor in your will?

A. Hicks Taylor was executor of my will, and Mrs. Forster's.

Q. Who drew the original will, do you know?

A. I think Hicks Taylor drew the original one.

Q. In the purchase of your interest, in your purchase and interest of Alpine Farms, from what source did you obtain the cash for that purchase?

A. You mean of my farm property?

Q. Apex Farms? A. Oh, Apex Farms.

Q. Apex Farms, pardon me. That is, directly, did it come from 198?

A. I think so. I asked Hicks Taylor where to make the check out from and I think it came out from 198. I am quite sure.

Q. Now, until the actual trial here with the tes-

(Testimony of Hans Forster.)

timony, were you aware that as a corporation, you were paying 38 percent and as an individual, 65 percent so far as income tax was concerned?

A. No, I never knew what the percentage was that I paid tax on as an individual or the corporation. [2567]

Q. Now, at the year-end of 1949, dealing with the year-end return of 1949, you recall a conversation with Mr. Taylor in regard to the figures that he then had? A. Yes.

Q. Will you state to the Jury just what occurred so far as you recall?

A. I can't just exactly give you the exact time when it happened, but Mr. Taylor came out, and he told us—he told me what the profit looked like for 1949, and I told him that it looked to me like it was 'way out of line with the profits that we have shown before, with the same kind of sales, and about the same spread, or the same gross profit that we have had before, and I told him we had better go ahead and try to take a look at it and see if there was any mistakes in there; if there was something wrong about it, because our sales was just about the same as they were the year before and, in fact, I think during the month of December, he said we made around \$20,000 or \$25,000 and as I remember back in just about the history of the company there was never any profits made in the month of December and I couldn't see where it came from.

Our poor months we broke even, in [2568] December, January and February, if we was lucky,

(Testimony of Hans Forster.)

and to show that kind of profit, I told him when he got back to his office, he should try to look at it and re-figure it to see if there was a mistake.

Q. Did you hear anything further in regard to that matter until after this investigation?

A. No. He didn't mention anything to me about it.

Q. Did you ever inquire from Mr. Taylor as to whether your bookkeeping staff and set-up was adequate?

A. Oh, I think I probably spoke to him a few different times.

Mr. Moriarty: The question has been answered, if the Court please. State the years.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. (Continuing) Yes, I have talked to him about it.

Mr. Moriarty: Will you fix the time, please?

Q. (By Mr. Griffin): Could you state in what year, or how long ago? [2569]

A. Well, I talked to him in 1937, and on one occasion that I definitely set the year on, I talked to him in 1946 and ending 1947 or 1948.

Q. What did he say?

A. He said that we was—everything was taken care of well, and we was getting along okeh, and he couldn't see any reason why we should have additional help. That is why that problem came in. Some accountants that I knew, and two of them

(Testimony of Hans Forster.)

that Mr. Taylor knew, wanted to sever their relationships with the company, and they came and asked me about it, and I told them to try and see Mr. Taylor, and he advised them that everything was under control, and we didn't need any extra help.

Q. When did you first learn that Mr. Taylor was in any trouble in his own income tax returns?

A. I think it was during 1949, the year 1949; I am quite sure it was during that period, but I think the Internal Revenue asked us for cancelled checks that we paid for the salary paid to Mr. Taylor and the Internal Revenue didn't talk to me about it, but I think they talked to Mr. Erickson, and wanted us to send in the cancelled checks of Mr. Taylor's.

So, the next time I seen Mr. Taylor, I asked him about it. I said, "What is this deal? [2570] What does the Internal Revenue want those cancelled checks for?"

And some friends of mine that he done work for, the Internal Revenue asked them for cancelled checks—Mr. Perkins in the Interstate Dairy Supply. I asked Mr. Taylor "What is the situation all about?" And he said, "Oh, just give them to them." And, "There is really nothing to it. They are just a couple of those fellows I stepped on their feet and they are trying to give me a rough time." He more or less laughed it off.

Mr. Moriarty: Can you fix the time?

Mr. Griffin: He said in 1949.

(Testimony of Hans Forster.)

Mr. Moriarty: Sometime in 1949.

Q. (By Mr. Griffin): When did you next hear about Mr. Taylor's own income tax trouble?

A. Well, he never—I probably asked him a couple of times how it was going, and he always told me he was getting along all right, and he definitely minimized it all the time until I heard over the radio or read in the newspaper that he pleaded guilty in Tacoma.

Q. And then did you have a conversation with him? [2571] A. Yes.

Q. And what was that?

A. Oh, I had the conversation with him that was just a short while before Mr. Taylor was sentenced in Tacoma when we went up to Conway when I talked to him about it. I said, "What is the deal?" What am I going to do to keep—to handle those books of the different companies?"

And he said, "Well"—

Q. (Interposing) Prior to that, did you ask him how your accounts were; how your books were?

A. Well, I asked him at that time, after that situation. He said, "Well, you got nothing to worry about. Everything is okeh."

And I says, "Well, who is going to take care of it?"

Of course, he didn't—at that time, I don't think felt that he was going to be convicted, and he said, "Well, there is not much use to try to bring anybody else in. I think Harold Erickson can take care of them and I will take it along to Puyallup,

(Testimony of Hans Forster.)

or to Renton, or up to Conway, and show him around, and then I think he can handle the books while I am not here."

Q. Did he take Mr. Erickson then up to Conway? [2572]

A. Yes, I had Mr. Erickson come along with me, and we picked up Mr. Taylor and we went to Conway.

Q. Did you—did anything occur on that trip in regard to the—in regard to Mr. Taylor's situation?

A. Well, that was actually the first time I ever seen him quite despondent about the whole situation. He seemed to be very much worried, and he was very downhearted, and he just felt like the whole thing was coming to an end, and I never seen him in that frame of mind for the whole 20 years that I knew him.

Q. Did he make any further reference to your books or records as to being correct or not?

A. Yes, he didn't figure there was anything for me to worry about, as far as the books was concerned.

Q. Until your present accountants started their audit of the books, did you know that there was anything wrong with them?

That is, any understatement of income at all?

A. No, not any time, until actually it started in in the spring of 1950 that there was anything wrong as far as the books was concerned. [2573]

Q. Did you ever make out any income tax return personally yourself? A. No, I never did.

(Testimony of Hans Forster.)

Q. Who made out all your income tax returns that were ever made out for you or Mrs. Forster?

A. Hicks Taylor did.

Q. Or for the children? A. Hicks Taylor.

Q. Or for all these corporations after you acquired an interest in them?

A. Well, Hicks Taylor made out all the income tax returns for all the companies. I think the testimony showed that Mr. Keck made out Apex Farms.

Q. Outside of Apex Farms, did Mr. Taylor make out all the returns? A. Yes.

Q. And who made the returns for the Trust that you established for the children?

A. Hicks Taylor did.

Q. Who kept the copies of the returns?

A. I never seen any of them. I guess Hicks Taylor kept them in his office.

Q. Did you ever have them? A. No.

Q. When you signed the return, will you tell the Jury just what occurred? That is, did you discuss and examine the return, or just how was it handled each time you signed a return prepared by Hicks Taylor?

A. On all the occasions that I signed the income tax return, Mr. Taylor probably would call me up at Issaquah, either the day before we would have to get it in, or he would call up and say "I have to ask for an extension" and then he would tell Mr. Erickson to make out a check, and he told me

(Testimony of Hans Forster.)

to come in and sign the returns, whatever the amount was.

I brought the check along and went into his office to sign it.

Q. He told you in advance that the check was to go with the return that had to go in about the same time it was signed?

A. That is right, yes.

Q. Did you examine the returns yourself, or did you do anything more than just sign your name?

A. In fact, we actually never talked about the returns except the amount that he told me was the check to bring in, whatever amount it was, and I brought the check along and maybe on some occasions that he brought them out to Issaquah and had me and Mrs. [2575] Forster sign, but we never talked about what the income tax consisted of, what it was made up of.

Q. During all of these years, did you have complete trust and reliance on Mr. Taylor?

A. That is right.

Q. Did you depend on him entirely?

A. Entirely.

Q. What was your understanding as to the checks put on your desk that you deposited in Account 198 as to whether they had been entered in the books or not?

A. I think during the period that happened, before or after, there was nobody told me that they wasn't entered in the books.

Q. So far as you were concerned, with the book-

(Testimony of Hans Forster.)

keeping department you had and the supervision by Mr. Taylor, did you believe that all entries were properly made?

A. That is right. I figure the whole bookkeeping staff under his supervision was in tip-top shape. I never questioned it.

Q. Did you at any time know or suspect until after this investigation started, that in your own returns, those of Mrs. Forster or of the Issaquah Creamery, that there was any understatement of income? [2576]

A. No, not at any time did I ever figure we wasn't paying the right tax until this thing came up and the investigation started.

Q. And did you believe in each instance that you were paying the precise tax that was actually due the Government? A. That is right.

Q. Now, when you made—the record shows here that you from time to time loaned various sums of money to both individuals and to your own corporations.

Did—and you loaned, particularly, from time to time to the Issaquah Creamery Company, is that right? A. That is right.

Q. Who handled those loans? Who prepared the notes for them?

A. Well, when money was needed for any purpose, I would ask Hicks about where I should take it from, and then whatever it was, we made a check out from, and put it into the Issaquah Creamery Company and Hicks Taylor made out the note and

(Testimony of Hans Forster.)

put the interest rate down, and then at the end of the year, he would tell Mr. Erickson to make me out a check for the [2577] interest for the amount that I loaned the corporation.

Q. Was there any portion of your financial affairs with which Mr. Taylor was not intimately familiar?

A. Well, I always felt he knew more about it than I did.

Q. Was Mr. Taylor aware of the fact that you purchased a farm and built a barn and had a tenant?

A. That is right. I asked him about it before I bought the farm, and I think the check was made out—it was an Alpine Dairy check.

Q. Did Mr. Taylor know you were a director of the Washington State Bank?

A. That is right.

Q. Did Mr. Taylor participate in your borrowings and loanings in regard to purchasing futures in butter?

A. Well, I couldn't quite say about that. The actual transaction that got me to buy some futures in butter came through Bob Stephenson, who was my butter broker, but I told Taylor about it. The reason I remember I told him, I mentioned Mr. McDowell was the broker, and I knew McDowell was a broker friend of Hicks Taylor, and he said, "That is nice to give the [2578] business to Hal."

So, I know the conversation.

Q. By the way, you at one time purchased—the

(Testimony of Hans Forster.)

record shows a substantial block of war bonds, one hundred fifty thousand dollars, I believe; is that right? A. Yes.

Q. Did Mr. Taylor have anything to do with that transaction?

A. Well, he told me that these bonds could be bought at Peoples Bank.

Mr. Moriarty: What year?

Mr. Griffin: The record shows the year.

Mr. Moriarty: Do you know it?

Mr. Griffin: I can get it for you in a minute.

The Court: We might take a recess at this time.

Mr. Griffin: There is an exhibit on it.

The Court: Ladies and Gentlemen of the Jury: We will now take the recess for luncheon.

The Court calls your attention to the admonition given on similar occasions, and asks that you heed it on this occasion. You may now be excused until 1:45. [2579]

(Whereupon, the Jury retired from the courtroom.)

The Court: It is stipulated the Jury have left the courtroom?

Mr. Moriarty: Yes, your Honor.

Mr. Griffin: Yes, your Honor.

The Court: You may step down.

The Witness: Thank you. [2580]

* * * * *

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

(Testimony of Hans Forster.)

It is stipulated that the Jury and all Defendants are present in the courtroom?

Mr. Moriarty: Yes, your Honor.

Mr. Griffin: Yes, your Honor.

The Court: Mr. Griffin, you may proceed.

Q. (By Mr. Griffin): Mr. Forster, from what account did you generally pay your personal bills; that is, the [2583] grocery bill, living and so forth; how was that paid?

A. Mrs. Forster paid it out of her own personal account.

Q. Joint checking account, was it?

A. Yes, I don't think I ever wrote any checks on it.

Q. And were the doctor bills and dentist bills and those things ordinarily paid out of that account?

A. That is right, yes.

Q. How did—did you carry any checkbook or checks with you on any account?

A. I carried one of those pocket check books from Peoples National Bank in Seattle here on Fourth Avenue that Mr. Erickson fixed up for me, and put Alpine Dairy stamp on it. It is what they call a counter check before it was made up in a little book, and I carried it in my back pocket.

Q. Did you use that?

A. Yes, I used it quite often. If something came up, I made checks out on it during my business transactions, or——

Q. Is that both business and personal?

A. That is right, yes.

(Testimony of Hans Forster.)

Q. Did you cash checks on it? [2584]

A. Yes.

Q. And did it have a stub from which you tore the check?

A. That is right. It had a stub after I took the check off, and marked the date and the amount and what it was for, and then two or three times a month, or when the checks were out, whatever the case would be, I would turn the stubs over to Mr. Erickson or ask for another book. I would pick up half a dozen at a time, and give them to Mr. Erickson, and he would put Alpine Dairy stamp on it.

Q. Did Mr. Taylor ever discuss with you as to whether you had a drawing account?

A. Yes, we talked about it quite a few times. I can especially remember in 1940 when he reduced my salary from \$24,000 a year to eighteen, he said, "You have a drawing account at Alpine Dairy," and I knew I had a salary account. He told me I had a salary account at Issaquah.

Q. Can you state some specific instances in connection with some specific matters that you discussed with Mr. Taylor, Account 198 in the Issaquah Bank?

A. Well, I discussed 198 quite frequently with him. I can recall the purchase of Apex Dairy and Blue [2585] Ribbon Dairy, where we discussed 198, and he told me how much to make the check out for, and where to get it from, and I can remember loaning Issaquah Creamery fifty thousand dollars.

(Testimony of Hans Forster.)

and Hicks Taylor made out the note when we purchased butter.

I can remember discussing with Mr. Taylor when we built the Alpine Ice Cream plant with Mr. Strack at that time president of Peoples Bank and Mr. Donaldson and Mr. Taylor about taking a certain amount of money out of 198 and putting it into the building account, and the full amount was discussed in 198, the amount of money we had in there at that time, and that was security.

Peoples Bank wanted—not actual security,—but they knew the money was there. That is the reason I didn't take a mortgage on the Alpine Ice Cream plant for about \$75,000 to help build it. I think another occasion was when we discussed this purchase of real estate from Cole Realty Company with Mr. Hall of the Washington State Bank, and Mr. Taylor in the Alpine Dairy office.

The Savings Account 198 was discussed in that conversation.

Q. Did you consider 198 a personal account or a business account? [2586]

A. Well, as far as 198 was concerned, it was just like any other business account. If I needed money at Apex Farms, or if I needed money at Alpine Ice Cream, or Dairy, or Issaquah Creamery, that is where the money came from.

My salary checks, if there was enough money in the personal account for Mrs. Forster, I deposited my salary checks into the savings account 198.

Q. And in that connection, referring to A-61 for

(Testimony of Hans Forster.)

identification, which is still a photostat, are all the items on there and on the memorandum on there in your own handwriting? A. Yes, they are.

Q. Is it your opinion then that that is a true copy of the original upon which you wrote?

A. There is no question about it, yes.

In fact, I turned the original over to Mr. Brody, and that is where the photostat was made from, I suppose.

Mr. Moriarty: Is that the one dated January 1—

Mr. Griffin: (Interposing) 1947.

Mr. Moriarty: (Continuing) —1947?

Mr. Griffin: Yes, sir. [2587]

Q. (By Mr. Griffin): In these various memorandums of that kind that you discussed with Mr. Taylor, did you put down the Washington State Bank and the amount you had in there at those times?

A. That is right; Washington State Bank, Peoples, or whatever I figured I had savings, and I marked on those slips the actual investment in the different companies.

Mr. Griffin: I again offer Exhibit A-61, if the Court please.

Mr. Le Sourd: Same objection.

Mr. Moriarty: We have no objection.

The Court: In view of the objection made by Mr. LeSourd, the Court believes that further proof has to be adduced before it may be admissible.

(Testimony of Hans Forster.)

Q. (By Mr. Griffin): I am now handing you Exhibit A-61, for the purpose——

Mr. Griffin: (Interposing) Strike that.

Q. (By Mr. Griffin continuing): Without refreshing your recollection, do you know what you had in the Washington State Bank on January 1, 1947?

I mean, in actual dollars and cents? [2588]

A. No, I wouldn't know.

Q. I hand you Exhibit A-61, for identification, and ask you if that refreshes your recollection as to the amount you had in the Washington State Bank on or about January 1, 1947?

Mr. Le Sourd: If the Court please, may I inquire as to that?

Mr. Forster, by looking at that, can you recall something in your own mind that you knew about this subject; as to the exact amount you had in there?

The Witness: Without looking at this to know the exact amount I had in there?

Mr. Le Sourd: Yes.

The Witness: Unless I would take a look at the figure, I wouldn't know.

Mr. Le Sourd: In other words, you would have to read it off of the exhibit?

The Witness: Either that, or out of the savings book, yes.

Mr. Le Sourd: I will object to the use of this, your Honor, with the admission and on the ground

(Testimony of Hans Forster.)

it does not refresh his recollection by simply reading the exhibit into evidence.

The Court: I will ask him the further question:

Do I understand, then, Mr. Forster, that that doesn't—apart from reading, it doesn't refresh your recollection?

The Witness: Well, I knew that I had some money in the Washington State Bank. I couldn't go ahead and give you the exact hundreds and cents that I had in there January 1, 1947, unless I read it. I knew I had a savings account, but as to the exact amount, it is impossible for me to think back seven years.

The Court: But, apart from that, you knew you had——

The Witness: (Interposing) Oh, definitely, sure.

The Court: I might ask you:

Would you say it was a substantial amount or have you any idea?

In other words, you have some recollection of it being a substantial amount as distinguished from a few dollars?

The Witness: I knew I had a substantial amount in the Washington State Bank, and I knew I had a substantial amount at Peoples. I tried to keep them about the same, and that is what I used the savings account for, to finance the different companies.

The Court: I will overrule the objection.

Q. (By Mr. Griffin): What was the amount on January 1, 1947, in the Washington State Bank?

A. \$62,602.02.

(Testimony of Hans Forster.)

Q. And did you discuss that item on or about that date with Mr. Taylor?

A. I discussed all the items on those operations with Mr. Taylor.

Q. While I am up here with you, will you look at Exhibit 7, which is the income tax return of Evelyn Forster for the year 1946? Do you recognize Mr. Taylor's signature as——

Mr. Moriarty: (Interposing) It is not in evidence, Mr. Griffin.

Mr. Griffin: Sir?

Mr. Moriarty: I don't think that is in evidence.

Mr. Griffin: I am sorry. I thought they were. Is seven not in evidence?

The Clerk: No.

Mr. Moriarty: You objected to them.

Mr. Griffin: I think they are relevant now. I will offer them.

Mr. Moriarty: We have no objection. [2591]

The Court: What numbers are those?

Mr. Griffin: 7 and 9.

Mr. Maxwell: 7, 8 and 9.

Mr. Griffin: 7, 8 and 9.

Mr. Le Sourd: We will object, if your Honor please.

There is no relevancy shown as to these returns. I think one return of Mr. Forster was admitted because it had the breakdown of the detail of the return which showed the information for his return, but there is no relevancy we can see in these.

The Court: If you wish to state the purpose?

(Testimony of Hans Forster.)

Mr. Griffin: I am perfectly willing to state the purpose. I desire to prove by this witness, and will substantiate by other witnesses on Exhibit 7 for identification, which is the income tax return of Mrs. Forster for 1946 and Exhibit 9, the income tax return of Mrs. Forster for the year 1948, that the signature thereon is not the signature of Evelyn Forster, but her name is signed by L. Hicks Taylor.

Mr. Le Sourd: We still say it is utterly irrelevant to the case. No materiality whatsoever.

The Court: Similar to the objection you [2592] have offered to the other testimony.

Mr. Le Sourd: No, your Honor, this is irrelevant to any issues in the case that I know of. It has no bearing on the tax evasion at all. It is simply a further attempt on the part of the Defendant Forster to try to prejudice the Defendant Taylor in every respect possible, and we object to it on that ground.

It is simply an attempt to go off into things that have nothing to do with the actual issues presented in the case. Just because Mr. Forster came in at the last moment to sign these returns without Mrs. Forster being there, and it became necessary for someone to sign her name has no bearing on this case.

The Court: Well, I don't believe the fact that Mr. Taylor may have signed the return, if he did so sign, would have any bearing on the case other than it may establish that Mr. Taylor did handle all the tax returns and, I gather, it is part of the

(Testimony of Hans Forster.)

theory of Mr. Forster that because of that, he did not know the alleged tax evasion.

Mr. Griffin: That is correct.

The Court: Whether that theory is accepted is a matter for the Jury, and I take it, if [2593] Mr. Taylor has any showing to make, he will make his showing when the time comes.

The Court will overrule the objection and advise the jury that the fact these may have been signed by Mr. Taylor, if it should be so established as represented by counsel, would in and of itself have no bearing upon the case.

The Clerk: 7, 8 and 9 are admitted?

The Court: 6 and 8.

Do you also offer 7?

Mr. Griffin: Yes, it is 7, 8 and 9.

The Court: 7, 8 and 9 are admitted in evidence.

(Plaintiff's Exhibits Nos. 7, 8 and 9 admitted in evidence.)

Q. (By Mr. Griffin): Mr. Forster, are you familiar with Mrs. Forster's signature?

A. That is right.

Q. Handing you Exhibit 7, I will ask you if at the bottom of the page here are the words "Signature of taxpayer," and if that is the signature of your wife Evelyn Forster?

A. No, it is Mr. Taylor's signature.

Q. And is the same true of Exhibit 9? [2594]

A. Yes.

Mr. Griffin: May I refer to these—to the Jury

(Testimony of Hans Forster.)

for one item, if the Court please, on the left-hand side: "I declare"—I am reading from Exhibit 7, first.

"I declare under the penalties of perjury that this return, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief, is a true and correct and complete return."

Signed, L. Hicks Taylor, with the stamp that has been referred to heretofore.

In Exhibit 9, the same signature, and another stamp. The stamps are not identical in form, but are in substance.

On Exhibit 8, for 1947, there is no question. I offered that at the Government's suggestion.

Q. (By Mr. Griffin): Reference has been made to casein. What is casein, Mr. Forster?

A. Casein is a by-product that is made out of skim milk.

Q. And with reference to these casein sales that were [2595] made and you eventually found had not gone through the books as you have testified, what was the nature of that casein at that time?

A. Well, casein is used for a binder that they use mostly to make glue with, and most of the casein that is being used right now is imported from Argentina, at the present time, and during the period of time of the early 1940's, when we didn't have any roller to make roller powder skim milk to sell for human consumption and we had skim

(Testimony of Hans Forster.)

milk over, we turned it into casein. That is about the only way we could get anything out of it, or dump it down the sewer or into the creek.

So, after the fat were taken out, that is the only thing we had left to do with it until we put our roller process in to sell roller powder milk powder, and the market fluctuated quite heavily, due to these imports from, especially South America. The price might go up to eighteen cents a pound or twenty cents a pound, and then in a couple of weeks it might drop down to as low as eight or nine. It all depends on what the market reaction was, but it was quite static. The only time we made casein was during the flush period, because that is the time we had all of this milk coming in, and whatever [2596] was left, we turned into casein, and we run some of our buttermilk that came off of the churnings into casein, too, and during the flush period when we had this milk, we naturally run behind.

Something like—we had to dry it and we melt it up in small churns and had to dry it up, and some of it got moldy on us, and we took around one thousand sacks over to the neighbor's barn, Albert and Elmer Anderson. They had an old cow barn, and we hauled it over there and stacked it up, and we submitted samples to Borden's, and—that is, the Casein Company of America, and to Adhesive Products Company. They were the only two who would buy it, and they turned us down, and we left it over there for awhile, and I would say, maybe

(Testimony of Hans Forster.)

six or eight months, or longer than that. I just can't recall the period.

I know it was past, quite past, the first of the year when we had this thing left, and having these moldy spots in the casein, after they told us about their examination, we didn't figure it was much use to carry it as inventory because we didn't have any sale for it, as long as nobody bought it. And, there was a change—I think it was in the spring of the next year there was a change in the tariff, and the casein went up about seven or eight [2597] cents a pound, and it created quite a shortage in this part of the country on it, and they got ahold of me and wondered if I still had the casein, and I told them I did.

Q. Without any detail, you did sell this old casein that had been taken out of inventory, to Borden's, as we have had testimony here?

A. Yes.

Q. Now, did you have from time to time, insurance claims upon which collections would be made?

That is, damage claims, small ones, paid by insurance? A. Yes.

Q. Who handled most of that insurance of that kind?

A. Well, I would say Wayne Meek handled most of it.

Q. And any burglary insurance?

A. Taylor Brothers handled burglary insurance and handled the bonding of the drivers.

(Testimony of Hans Forster.)

Q. And fire insurance?

A. I don't know if Taylor had any fire insurance or not. I couldn't tell you, offhand.

Q. You are familiar with these—what has been called the discount checks in evidence here, checks written to people and not cashed, and returned to you? [2598]

A. Yes.

Q. (Continuing) Which you deposited?

Did you ever discuss that operation with Mr. Taylor?

A. Yes, I discussed it with him and told him the checks were being sent to Issaquah again and told him what I was doing with them, and he didn't tell me not to do it that way, or give me any other information, and to go ahead and not to worry about it.

Q. In the Werner and Murphy transaction, that is the one where the witness has testified you personally loaned some twenty-five thousand dollars, I think, on their operation, who handled the matter of that loan and making out of the notes?

A. Hicks Taylor worked it out with me together.

Q. When—did the—at all of the periods——

Mr. Griffin: Strike that.

Q. (By Mr. Griffin continuing): Of what does your family consist?

A. Two girls and a boy.

Q. How old is the boy? [2599]

A. The boy will be 21 in July.

Q. And where is he?

A. He is in the United States Navy in the Mediterranean.

(Testimony of Hans Forster.)

Q. And are the two girls married?

A. Yes.

Q. They are the two here in the courtroom?

A. Yes.

Q. Prior to your son going in the Navy, and prior to the marriage of your two girls, did they all work from time to time in the Issaquah Creamery?

A. Yes, some of them at Alpine Dairy.

Q. And did they do the same work that any other employee would do during the time that they worked there?

A. Yes, I am positive they done as good a job or as good as any of the rest of them did.

Q. And were they paid regular wages?

A. That is right.

Q. As any other employee in that same work would have gotten?

A. Well, they reminded me a few times that they was earning more money than certain people that they was working with, but I think they was lowest paid salary in the company. [2600]

Q. Now, were they continued on the payrolls after they had ceased actual work in the Creamery or Alpine Dairy, whichever it may be?

A. Well, they was continued on the payroll, the girls were, when they went on the trip to Switzerland in 1947, from I think they left in August, 1947, and came back in May, 1948.

But Hans, Jr., worked at the Creamery during that period when he didn't go to school, Saturdays or Sundays, or during the vacation, and we went

(Testimony of Hans Forster.)

ahead and took two checks from the girls and split them up and put them in the savings accounts, so actually, Hans, Jr., didn't get paid during the period when the girls were away.

Q. But, so far as the girls being on the payroll were concerned, did you discuss that matter with Mr. Taylor?

A. I asked him when we first left what should we do about it, and he said, "Might as well keep them on."

Q. Who made out the income tax return for the two girls? A. Hicks Taylor did.

Q. For that period? A. Yes. [2601]

Q. Mr. Marx testified, I believe, in substance that when he first discussed the matter with you as to whether there might or might not be any errors in your books and records, that you stated if there were it certainly would not be—Mr. Taylor would not be considered responsible if errors made.

Now, at the time of that discussion with Mr. Marx, did you still then have full faith and confidence in Mr. Taylor? A. I definitely did.

Q. Did you go so far, after his conviction, after his plea and sentence, to talk with the parole officer in his behalf?

Mr. Moriarty: Objected to as immaterial.

The Court: Objection sustained.

Q. (By Mr. Griffin): When did you cease to have full faith and confidence and then eventually no confidence of any kind, if that is the fact, with Mr. Taylor?

(Testimony of Hans Forster.)

A. Well, of course, after this new accountant started to come into the picture and everything just started to roll up, or roll up itself like a snowball coming down the hill, I got to wonder what it was all about every time they talked to me, the figure got [2602] bigger and bigger, and I just was so confused, I figured if Taylor knew about it before, that he definitely would have seen me straight on it. He always made me believe and told me that our books was in good shape, there was nothing to worry about, even after he was—even after his own deal. I asked several times about it, when we started discussing it, and he never once even mentioned to me that there was anything wrong about it.

Q. What was your—do you recall the occasion of your first meeting with Mr. Eppler?

A. Well, I remember the first time I met Mr. Eppler was in Mr. Tremper's office.

Q. Was this the meeting in August, 1950?

A. That is right.

Q. What—do you recall what Mr. Eppler's introductory remarks to you were?

A. He said his job was to put me in the penitentiary.

Q. Is that the first time that you had any thought that anyone was making any claim of actual fraud in your income tax return?

A. That is the first time that anyone even mentioned to me, the accountants or attorney, or the first time I heard about it. [2603]

(Testimony of Hans Forster.)

Mr. Griffin: You may inquire, reserving further on the——

The Court: (Interposing) A-61?

Mr. Griffin: A-61, and an original, if we can find it.

Cross Examination

Q. (By Mr. Moriarty): Mr. Forster, I take it that Mr. Taylor was not at Issaquah every day?

A. No.

Q. How many days in the month was Mr. Forster at Issaquah during the period between nineteen——

Mr. Le Sourd: Mr. Taylor, you mean.

Q. (By Mr. Moriarty continuing): Mr. Taylor, between 1945 and 1949?

A. Well, I couldn't tell you exactly how many times he was up there.

Q. How many times a month?

A. I couldn't tell you exactly how many times a month. He had a summer place up at Lake MacDonald.

Q. I am asking about Issaquah Creamery.

A. Yes, I am trying to tell you about Issaquah Creamery. He at least would come once a month, or stop by on the way from Seattle to Lake MacDonald [2604] to talk to me or to Mr. Erickson.

Q. How many times a month did he come on an official visitation to the office?

A. As far as I was concerned, there wasn't any official visitation. Taylor was not only our account-

(Testimony of Hans Forster.)

ant, he was a friend of the whole outfit there. Everybody considered him so.

Q. Who kept the books at Issaquah, month to month?

A. Well, there was several people in there handled it. Mr. Erickson was in charge of the office under Hicks Taylor's supervision.

Q. When Mr. Taylor wasn't there, who discussed the books with you?

A. When Mr. Taylor wasn't there, there wasn't any books discussed.

Q. You mean that it went from the first of the month until Mr. Taylor's visit that there wasn't any discussion of the books?

A. I never discussed the books with anybody except Mr. Taylor.

Q. Did you discuss them with Mr. Erickson?

A. I never discussed any part of the books with Mr. Erickson. That part didn't have anything to do with me. [2605]

Q. Did you discuss the question of whether an account was current or not current?

A. He didn't handle—Mr. Erickson didn't handle the collections.

Q. Who did? A. Miss Neukirchen.

Q. Miss Neukirchen? A. That is right.

Q. Was she under Mr. Erickson? A. Yes.

Q. Did she report to you, also?

A. The only time she reported to me, when an account got into arrears so I go ahead and jack them up and see if they can't get current.

(Testimony of Hans Forster.)

Q. And you had instructions to her to report to you if some account was delinquent or stale?

A. Well, it is like I mentioned before on those larger accounts I handled it myself.

I didn't only handle the sales, but I seen to it that the money came in.

Q. And then, at the end of each month, what did you get from Mr. Taylor?

A. At the end of each month, probably not every month, but most months, he sent me out a profit and loss statement. [2606]

Q. And who prepared the data upon which the profit and loss statement was made?

A. Well, I would say the whole office did.

Q. Who did you look to to prepare the data for Mr. Taylor?

A. I didn't look to anybody. I looked to Mr. Taylor to see he got me the statement.

Who he made responsible, I didn't care who.

Q. Mr. Erickson had an office next to yours?

A. Mr. Erickson definitely didn't work under my supervision or my instructions, not any different than any one of the people at Simonson and Forster, or Renton, or Finstad, or Apex Farms, or Alpine; none of those people worked under my instructions.

Q. They were working for you, weren't they?

A. Well, they definitely worked for me, all of them.

Q. And you were making the profit?

(Testimony of Hans Forster.)

A. If there was any made, that is right, and they kept their jobs.

Q. And Mr. Taylor's visitation each month was for what purpose?

A. To show me how the different operations was [2607] going along.

Q. Well, tell the Jury what he did on a typical visit; tell the jury.

A. Well, Mr. Taylor would come out most of the time on a Saturday, and then he—into a—the office is cut in about one-third and two-thirds, and one-third of it is two private offices; one of them is Mr. Erickson's, and another one was mine, and then the other two-thirds part, there is four desks. At that time, we had three girls, and then there was one desk that was open, and Taylor would come out about 9:30 or 10:00 o'clock, and he would occupy one of those desks, and then he worked back and forth, and worked with Erickson, and until Mrs. Forster called and told me lunch was ready, then I took Taylor and took him home and we had lunch with the family, and two o'clock, I brought him back, and then he probably worked another hour and a half or maybe two hours, it all depends on how much work he has, and when he got through, he gave me some kind of an idea how we done the month before. Most of the time, it was the last Saturday of the month that he came out, and he gave me some kind of a rough idea of the—how the operation looked for the previous month. [2608]

(Testimony of Hans Forster.)

Q. Where would Mr. Taylor get this information?

A. I suppose he got it from the books and records of the Issaquah Creamery.

Q. You mean, he actually went through all of the books on that visit?

A. Well, you ask Hicks Taylor. I couldn't tell you. I told you I didn't know anything about it, and he had a bunch of books in front of him and found figures out. I couldn't tell you.

Q. But you wanted to know, at the end of the month, if you made any money?

A. That is correct.

Q. And he would show you—what would he show you?

A. He would show me whether we made money or lost money.

Q. What would he show you, the number of sales?

A. That is right, yes. That is part of the statement.

Q. The payrolls?

A. Well, he showed me plant overhead, how much we paid for wages.

Q. And you discussed those with him? [2609]

A. Well, he showed me plant overhead, how much we paid for wages.

Q. And you discussed those with him?

A. I don't think so. We maybe discussed the sales when—after he sent me the statement out evidencing a certain profit in it. We probably discussed the sales.

(Testimony of Hans Forster.)

Q. Well, were there many losses in the operations?

A. Oh, we had some losses just like any other business.

Q. In the years 1945 to 1949, were there any losses?

A. There may have been some months that there were losses. I couldn't tell you unless you show me the statement.

Q. What did he do for you at Finstad and Utgard?

A. The same thing.

Q. Did you go out with him then?

A. I have picked him up most of the time, I would say.

Q. You don't say that Mr. Taylor kept the books at Finstad and Utgard, do you?

A. I don't know what he did. He supervised the books. [2610]

Q. Did he make the entries in the books?

A. He went up there and worked in the office while Mr. Egeness was in the plant.

Q. Did you see Mr. Taylor make any entries in the books?

Mr. Keesling: If the Court please, I would like to know what he means by the books.

Mr. Moriarty: Well, they are right here, if you want to know.

Mr. Keesling: Does he mean the books kept by Mr. Taylor or at Conway?

Mr. Moriarty: In the books of Issaquah Creamery.

(Testimony of Hans Forster.)

Mr. Griffin: Just a moment; we were talking about Finstad and Utgard, of which Taylor had the ledger.

Q. (By Mr. Moriarty continuing): All right, the books at Finstad and Utgard that Taylor didn't have?

A. I don't know which books he had and didn't have. But if we went to Issaquah, I definitely seen him work—at Puyallup, or Finstad and Utgard, that is what he done. He wrote figures down.

Q. You saw him write figures down in books?

A. Yes, definitely, at all the places he wrote figures [2611] down. Which book he wrote them down, I don't know.

Q. And you saw him? A. Yes, definitely.

Q. Did you discuss what he was doing?

A. No, of course not.

Q. You were interested in the profits at Finstad and Utgard, weren't you?

A. That is right; I was interested in all of the profits at all of the plants.

Q. And also Simonson and Forster?

A. Correct.

Q. And also Apex Farms?

A. That is correct.

Q. And also at the Arctic Gardens?

A. You mean if I was—if I was interested in the profits?

Q. Yes.

A. I was interested in both the profits and the losses.

(Testimony of Hans Forster.)

Q. Now, in each month, you got a statement?

A. That is correct.

Q. And each month, that showed you what the operation of the business was?

A. That is right. [2612]

Q. And you discussed them with Mr. Taylor?

A. I discussed them after he sent the statement, with both of them.

Q. But you yourself never looked at the books?

A. Never looked at the books.

Q. And you, yourself, never made an entry?

A. No.

Q. Handing you, Mr. Forster, Plaintiff's Exhibit 126, which is a financial statement dated December 31, 1943, and bears your personal signature, I will ask you if you recall seeing that?

A. Yes, I am sure that is my signature.

Q. And, calling your attention, Mr. Forster, to the net worth set down as of December 31, 1943, I will ask you to read to the Jury what figure is recorded there under your signature.

A. \$236,457.19.

Q. As of December 31, 1943?

A. December 31, 1943; yes, sir.

Q. And that has your signature on it?

A. That is right.

Q. And you signed that?

A. That is right.

Q. And affirmed that it was true? [2613]

A. Well, I figured it was true. Taylor gave it to me. He made it out. That is all I can tell you.

(Testimony of Hans Forster.)

Q. You can read it. That was a simple statement. A. I did what?

Q. You can read the statement in a very few minutes?

A. I can read what it says in it, yes.

Q. Now, will you read what it says on Exhibit 125, which is dated September 30, 1945, and examine that and tell the Jury what your net worth was on September 30, 1945, according to that statement?

A. According to this statement, net worth was \$426,862.02.

Q. So that in the period between January 1, 1944, and September 30, 1945, your net worth had increased approximately \$200,000?

Mr. Griffin: Just a moment. I understood the other document was 1943.

Mr. Moriarty: January 1, 1944, for December 31, 1943. This is September 30, 1945, about 18 or nineteen months later.

Q. (By Mr. Moriarty continuing): Now, I ask you if that [2614] statement does not show that your assets and net worth had increased \$200,000 in that period?

A. That is what it says, yes.

Q. Did you——

A. (Interposing) I think that is the difference. It is one hundred thousand.

Q. You realize on September 30, 1945, that in that short period you had increased your assets \$200,000?

A. I never paid any attention to the statement

(Testimony of Hans Forster.)

under net worth. Actually, I didn't know anything about it until this thing came out.

Q. Well, you gave that to the bank?

A. Well, he probably gave it to the bank, and they called me in there and told me to put my name on it.

Q. But you signed your name to it?

A. That is right.

Q. You believed it to be true, didn't you?

A. Well, if they want to give me the statement, I definitely believe in Hicks Taylor giving me the right figures and facts.

Q. Mr. Taylor's name is not on it; your name is on it, Mr. Forster?

A. You just don't know the close co-operation there [2615] was between Hicks Taylor and myself, or otherwise, you wouldn't ask me the question.

Q. You asked Hicks Taylor any time you had any question about whether or not it could be deducted, didn't you?

A. I never asked Hicks Taylor any time whether it could be deducted.

Q. When your daughters were in Europe you asked whether they could be on the payroll?

A. That is the only time I asked him if we had to keep on continuing the checks. That is the only time I ever asked him about anything and as far as the statement was concerned, unless the statement was off—if I figured the statement was off on the profit and loss, I would talk to him about it.

(Testimony of Hans Forster.)

Q. You did that in late 1949, didn't you?

A. That is correct.

Q. And that was a meeting between you and Erickson and Taylor?

A. It wasn't a meeting. Hicks Taylor was out there, and we was—him and I was talking about it in the office. I don't know if Taylor—if Erickson was present or not. He was in the office, of course, and maybe in my office.

Q. What made you so irritated at eighty thousand dollars being shown there as a profit? [2616]

A. Those are sales. So far as the way I tried to figure out my profit and loss without the statement, it was——

Q. (Interposing) You did that in your head?

Mr. Griffin: Just a moment. I submit the witness be entitled to answer the question.

Mr. Moriarty: I would like him to answer my question.

The Witness: I try to do it.

The Court: Just a moment.

The Witness: All right.

The Court: Mr. Reporter, read the question.

If you wish to make any explanation after you have answered, you may.

(Whereupon, the following question was read by the reporter:)

“Q. What made you so irritated at eighty thousand dollars being shown there as a profit?”

The Witness: You want me to answer it?

Mr. Moriarty: Yes.

(Testimony of Hans Forster.)

A. I wasn't irritated. I told him that statement was wrong.

Q. Why did you say that, you hadn't looked [2617] at the books?

A. When I told him about it, he didn't give me the statement. He told me the profit there was in 1949.

Q. And what——

Mr. Griffin: (Interposing) Just——

Mr. Moriarty: Has he completed his answer?

Mr. Griffin: No, he has not.

The Witness: No, I am not through.

A. (Continuing) And I told him to check the sales. We checked over the sales and our sales was within four percent or five percent it was the year before, and we check over our wages, and we checked over our other operating expenses and our percentage of gross profit ran all along between $1\frac{1}{4}$ and $2\frac{1}{2}$ percent and that statement showed about 6 percent and there never was at any time that we showed that kind of a profit any place, and it just couldn't be done. It was 'way out of line.

Q. (By Mr. Moriarty): With what were you checking?

A. I checked against the sales.

Q. Where were you checking?

A. Taylor gave me the sales.

Q. Who? A. Taylor did. [2618]

Q. When he gave you the sales, it showed eighty thousand dollars profit?

(Testimony of Hans Forster.)

A. No, it was eighty thousand dollars more than the previous year.

Q. What were you checking against?

A. Against his own figures.

Q. Where were they?

A. Well, he brought them along. We talked about it.

Q. You mean sales for 1948?

A. That is right.

Q. So there was a discussion between you and Taylor and Erickson at least in 1949 where you did discuss the figures on the books?

A. That is correct. We didn't discuss the figures on the books. We discussed the profit and loss for the year 1949 and discussed the profit and loss for the month of December.

Q. Why would the month of December make much difference in the whole year, when those were the slack months?

A. It made a big difference to us, because he showed twenty thousand dollars profit, and we never made a profit in that month before.

Q. I understood your question that the big [2619] months were before the fall and the slim months were in the fall? A. Correct.

Q. So that most of the profits for 1949 must have been made in earlier 1949?

A. Some of it was, but he showed profits even as far as December was concerned.

Q. Did you discuss it also with Erickson? He was there?

(Testimony of Hans Forster.)

A. I don't know if Erickson came to the office, or not. We discussed general operations together.

Q. I am talking about this time that you mentioned in your direct testimony here you told him that it was all out of line.

A. That is right.

Q. How much was it out of line?

A. I just got done telling you that our gross profit from those sales showed between 2 and 2½ and sometimes at the most about 2½ percent.

Q. Those exhibits——

Mr. Griffin: (Interposing) Would you permit him to complete his answer, Mr. Moriarty?

Mr. Moriarty: Surely, I will permit him to complete his answer. [2620]

Mr. Griffin: All right.

The Court: Have you completed?

The Witness: No.

A. (Continuing) That is the reason I called his attention to it. It was about three times as much.

Q. (By Mr. Moriarty): In those two statements that you signed your name to, you showed you made \$200,000 in the period of about 20 months?

A. I don't know what this consists of. When Taylor and I talked together, that was the statement of Issaquah Creamery Company and didn't have anything to do with Alpine Ice Cream—Dairy or Alpine Ice Cream, or any of my other holdings.

Q. Take those two exhibits and tell the Jury what you don't understand about any one of them.

A. Well, it says here, "Financial statement of

(Testimony of Hans Forster.)

Hans Forster," but what you discussed before was the profits of Issaquah Creamery.

Q. Wait a minute, now.

A. All right.

Q. Do you want to go back to the profits of Issaquah Creamery?

A. It all depends on you. [2621]

Q. I am asking you what in those two statements don't you understand?

A. I know that Taylor put them together and sent them to the bank, and I signed it. That is all I know. Where he got the figures, I wouldn't know.

Q. You never asked him?

A. I never asked him.

Q. But in 1949, you did ask?

A. That was an individual statement of one individual operation and we talked about it. We never discussed the net worth of all the different operations together.

Q. I am interested in finding out how long this discussion took, and what Taylor said, and what Erickson said, and what you said. Will you tell the Jury?

A. I don't know if Erickson even entered into the discussion or not. I can't tell you, but Taylor gave the profits for the year, and for the month of December, and gave me the sales, and I told him that the profits was out of line, was out of line with the gross profits that we have ever made on the same amount of sales. Our operation from a profit and loss standpoint doesn't change very much.

(Testimony of Hans Forster.)

You don't make 6½ percent off of the gross one month [2622] and make two and one-half percent gross the next month.

Q. And that would depend on what your volume was, wouldn't it?

A. I am talking about the same volume, too. If the volume is the same, if our wages and labor is about the same, and buying prices to the producers is about the same, I could figure it out in my head probably as close as some of his figures came.

Q. What prompted you in the fall of 1949 to decide that Taylor was out of line?

A. Well, I don't know. I just have to repeat it again.

Q. All right, repeat it.

A. I told you that the profit was about three times as much as it was the year before, and he gave me the sales figure from the year before, and we went over the P. and L. statement and the profit was three times as much, and I told him it didn't look like it was possible, and I told him, "I don't know how it could be done."

Q. Handing you what has been marked as Plaintiff's Exhibit 124, which also bears your signature and is dated March 31, 1947, I will ask you what your net worth shows on that report over your signature? A. \$686,157.28. [2623]

Q. And that was at the end of—

A. (Interposing) March 31, 1947.

Q. As of December 31, 1947?

A. That is right.

(Testimony of Hans Forster.)

Q. And that shows an increase of another two hundred thousand dollars from the previous statement I showed you? A. 426 to 686.

Q. Handing you what is marked as Exhibit 123, which is dated February 29, 1948, and over your signature, I will ask you what that shows in your increase in net worth? A. \$755,512.22.

Q. And that shows an increase from the previous year of \$175,000, doesn't it?

A. I wouldn't think so.

Q. Well, how much?

A. 686 against 755. That looks to me that it is closer to seventy thousand.

Q. Seventy thousand?

A. Seventy thousand, yes.

Q. Thanks for the correction.

A. You're welcome.

The Court: We will take the recess now, Mr. Moriarty. [2624]

Mr. Moriarty: Yes, sir.

The Court: Ladies and Gentlemen of the Jury: It is now time for the afternoon recess.

The Court calls your attention to the admonition given on similar occasions, and asks that you heed it on this occasion.

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, at 2:47 o'clock p.m. a recess was had in the within-entitled and numbered cause until 3:00 o'clock p.m. March 30, 1954, at which

(Testimony of Hans Forster.)

time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Moriarty.

Mr. Moriarty: Thank you, your Honor. [2625]
Would you read the last question?

The Court: Mr. Reporter, read the last question.

(Whereupon, the following was read by the reporter:

“Q. And that shows an increase from the previous year of \$175,000, doesn't it?

“A. I wouldn't think so.

“Q. Well, how much?

“A. 686 against 755. That looks to me that it is closer to seventy thousand.

“Q. Seventy thousand?

“A. Seventy thousand, yes.

“Q. Thanks for the correction.

“A. You're welcome.”)

Q. (By Mr Moriarty): Mr. Forster, handing you Plaintiff's Exhibit 121, which is your financial statement for December 31, 1949. I will ask you if that is your signature? A. That is right.

(Testimony of Hans Forster.)

Q. Is there anything on that statement that you don't understand?

A. Well, there are a lot of figures on here.

Q. You understand figures, don't you? [2626]

A. Well, I can read those figures, yes.

Q. Will you tell the Jury what your net worth, as shown over your signature, was on December 31, 1949?

A. \$681,761.62.

Q. Isn't that \$781,761.22?

A. Somebody added another figure on that. They put a "7" over the "6", and they put a——

Q. (Interposing) Do you recall that that was added?

A. No, I don't. This wasn't that way when I signed it. This is the first time I seen it this way with the additional figure of 681,000 against 781,000.

Q. And then, Mr. Forster, handing you Exhibit——

The Clerk: (Interposing) 134.

Q. (By Mr. Moriarty continuing) ——134, which is another statement dated December 31, 1949, I will ask you if you recognize your signature on that statement?

A. Yes, sir.

Q. And what does that show your net worth to be?

A. Well, there is two figures here, and [2627] one of them says "Total Liabilities, \$968,830.88"; and the other says "Net Worth, \$968,830.88."

Q. What are the liabilities on that, if any?

A. It says here "Total Liabilities, \$968,830.88."

(Testimony of Hans Forster.)

Q. Does it show any liabilities?

A. I wouldn't know.

Q. Does it show assets?

A. You mean cash in the bank?

Q. And other assets? Maybe I can help you.

A. It says here "Total Assets."

Q. Calling your attention to Exhibit 134, I will ask you if it does not show cash on hand and in the bank? A. That is right.

Q. \$87,000? A. That is right.

Q. U. S. Bonds, \$50,000? A. That is right.

Q. Total current assets, \$137,000; and Issaquah Creamery, \$401,899?

A. You have got real estate here.

Q. Real estate \$44,000 and Alpine Dairy \$161,000? [2628] A. That is right.

Q. Finstad and Utgard, \$121,125.90; 67 percent interest in the Apex Farms, \$67,275.55; 50 per cent interest, Puyallup Creamery, \$14,722.25; 33⅓ per cent interest, Renton Ice and Ice Cream Company, \$21,368.66, making a total of what figure?

A. \$968,830.88.

That is the amount in liabilities here.

Q. I see; there are no liabilities listed, but it is marked in there, total liabilities?

A. That is right.

Q. And that is your signature?

A. Correct.

Q. Could you explain to the Jury the difference between the statement that you gave of \$781,761.22 as of December 31, 1949, and the other statement

(Testimony of Hans Forster.)

which showed \$781,761, and the statement showing \$968,830.88 on the same date?

A. Well, Mr. Donaldson made this up from—made this up from the statements that he got from Mr. Taylor.

Q. You signed it?

A. That is right. I sign an awful lot of things I didn't know I was signing.

Q. Did you include in that statement the [2629] money in the personal savings bank that you gave to Mr. Donaldson, that is the larger figure?

Mr. Griffin: In that statement, which one are we referring to?

Mr. Moriarty: 134.

Mr. Griffin: There is no evidence that this witness ever made up that statement. The testimony is that Mr. Donaldson made it up.

Mr. Moriarty: The testimony is, and the fact is that the witness put his signature on it.

Mr. Griffin: I am only objecting to the form of the question.

Q. (By Mr. Moriarty continuing): All right. Did you read this statement before you signed it?

A. No, I didn't. I watched him put the figures in.

Q. From where or from whom did Mr. Donaldson get his figures?

A. He got it from the statements.

Q. Well, the statement there of December 31, 1949, has a difference of approximately \$180,000 on the two dates.

A. Well, he still got it from the statements that

(Testimony of Hans Forster.)

he had there. I furnished him statements from each [2630] individual operation. That is how Mr. Donaldson got the figures, and he put them in there, and afterwards he asked me to sign them.

I think the only information I furnished him was what I thought the farm was worth, and my home. That is the only figure I gave to Mr. Donaldson.

Q. Those are additional figures, then on the other statement, Exhibit 122, that you just referred to? A. To what?

Q. That makes a difference between the statement of December 31, 1949 that you gave to the bank on Exhibit 121 and the one that you gave to the bank as bearing date of that same day of \$968,000; the house wasn't worth that difference, was it? A. \$968,000, did you say?

Q. Between \$968,830 and \$781,761.22?

Mr. Griffin: The witness has not testified he gave any such statement, and I object to the form of the question.

Mr. Moriarty: I submit he stated he gave to Mr. Donaldson the additional figures on the house.

The Witness: That's right, and I gave him the farm. [2631]

Q. (By Mr. Moriarty): And the farm?

A. I don't know where he got—what he got the figures from. He made it out from statements that Taylor furnished me, and he had it right in front of him, and he made this up. I don't know for what reason, and he asked me about the home, and he asked me about the farm, and I told him what I

(Testimony of Hans Forster.)

thought it was approximately worth. That is all I can tell you.

Q. Mr. Donaldson made that mistake, then?

A. Which mistake?

Q. Is that correct, or incorrect?

A. I couldn't tell you today if it was incorrect. I couldn't tell you then.

Q. Now, we were referring before recess to the November conference or meeting at the Issaquah Creamery Company about the \$80,000 that was the subject of discussion.

Handing you what is marked as Exhibit 259-A, which purports to be a balance sheet of the Issaquah Creamery as of November, 1949.

I will ask you if that does not show a loss of \$9,000 in November, rather than a profit of \$25,000?

A. I didn't tell you it was the month of [2632] November.

I don't know. It was the month of December that showed the profit of \$25,000. This shows a loss in——

Q. (Interposing) When was this meeting?

A. (Continuing) ——in the month of November of \$9,953.62.

Q. When was this meeting?

A. It wasn't a meeting.

Q. In December?

A. He came—I don't know if we talked about it the end of December or the month of January when we talked about the 1949 profits.

(Testimony of Hans Forster.)

Q. What documents did you use when you discussed this extra profit that seemed amazing to you?

A. Like I told you, when he got through with his day's work and we get the figures together, he give me some rough idea of it and that—he didn't furnish me the statement at that time.

Q. That there had been a loss in November of \$9,953.62, didn't you?

A. I wouldn't know. This is not the statement that Mr. Taylor was giving me.

Q. This purports to be Mr. Taylor's work sheet that has been introduced in evidence. [2633]

A. I never seen it before, so that I couldn't tell you. I don't know what the finished figures were that Mr. Taylor gave me.

Q. Weren't matters similar to this what you got from Mr. Taylor at the end of the month?

A. He gave me a profit and loss statement at the end of each month, but not in this form.

Q. What kind of form was it?

A. He had it typed up. Unless it is here, I couldn't tell you what the month of November is, I knew I was surprised when we showed a profit in the month of December.

Q. That statement showed that the net profits for the Issaquah Creamery Company for the year then totalled \$121,133.54?

Mr. Griffin: Just a moment. Object to the form of that question. My only point is, you said, "that

(Testimony of Hans Forster.)

statement"; are you referring to—you have been talking about two statements.

Mr. Moriarty: 259-A.

The Court: Do you have the question in mind, Mr. Forster?

The Witness: Well, I have to see first what he is talking about, and where he is getting it here.

(Whereupon, document was handed to the witness.)

Mr. Moriarty: Take your time, Mr. Forster.

The Court: Mr. Reporter, you might read the question.

(Whereupon, preceding question was read by the reporter.)

A. It showed as of previous profits that—that month of November, 131,000, and then the loss of \$9,953 showed \$121,000 profit as of November 30th.

Q. (By Mr. Moriarty): Or, approximately, about \$12,000 a month?

Mr. Moriarty: Can you hand me the income tax returns of Mr. Forster?

(Whereupon, exhibits were handed to Mr. Moriarty by the Clerk.)

Q. (By Mr. Moriarty continuing): Mr. Forster, handing you Plaintiff's Exhibit 1, which is captioned U. S. Individual Income Tax for the calendar year 1945. I will ask you if that is your signature? A. That is right.

Q. And did you read above it the following legend: [2635]

"That I declare under the penalty of perjury

(Testimony of Hans Forster.)

that this return, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief, is a true and complete return."

A. No.

Q. Did you sign that?

A. I signed it, but I never read it.

Q. What part of the—of that return do you recall you read?

A. I didn't read any of it.

Q. Didn't you read even the amount of tax you had to pay?

A. As I mentioned before, Mr. Taylor called us up and told us to bring in the checks to accompany the income tax return, and told me to come in and sign it, and I would.

Q. But it was your money that was being paid, wasn't it; Mr. Taylor wasn't paying it?

A. That is right, yes.

Q. And you didn't even look at the figure of the tax?

A. I didn't look at the amount, or I didn't look at anything else. "Just come in and sign it," and [2636] that is what I did.

Q. And if he said it was \$100,000 tax, you would have drawn \$100,000?

A. If he told me it was \$100,000 tax and we would have to pay it, I would have brought him a check, if we had the money, and if I didn't, I would have borrowed it.

Q. You would? A. That is right.

(Testimony of Hans Forster.)

Q. Then why did you have an argument with him in November or December of 1949 about that \$80,000 profit that wasn't all taxes? He told you then that he had eighty thousand?

A. He told me what?

Q. He told you then that there was \$80,000 income, did he not?

A. No, he didn't. Whatever the statement shows, was what he told me.

Q. Tell me what was said. I am trying to get it, Mr. Forster.

A. I am trying to tell you.

Q. What happened on this meeting, whether in November or December, 1949?

Mr. Griffin: Or, he says, January. [2637]

Q. (By Mr. Moriarty continuing): Or January, 1950, whenever it happened? By you and by Taylor?

A. That is right; when Mr. Taylor told me about the profit that was made, for the month of December, and the way that it looked for the year, I told him that it was just about an impossibility. We went over the sales figures, and we went over the plant overhead, and I told him that it looked 'way out of line, and he'd better try to go over his figures and see if there was any mistake that was made. That is the only thing we talked about. There was no meeting. It was just the day he was out going over the figures.

Q. Does your individual tax return for 1945 reflect any of the figures that we have read in these

(Testimony of Hans Forster.)

previous exhibits to you of your net worth?

Mr. Griffin: I object to the form of that question, if the Court please. I don't know how an income tax return would reflect net worth figures.

Mr. Moriarty: It would reflect net worth, his net income after liabilities.

Mr. Griffin: I am still objecting to the form of that question because a tax return doesn't do anything of the kind.

The Court: I think the form is objectionable, Mr. Moriarty. [2638]

I don't know how it would reflect a net worth figure. Objection sustained.

Q. (By Mr. Moriarty): Your 1946 return was also filed by you under the same legend, and did you read that report or that return?

A. I didn't read any of it. The first income tax return I went over was when Touche, Niven, Bailey and Smart made them out for the year 1950 and that was the first time I examined them. It was when Mr. Marx or Mr. Eppler questioned me. Otherwise, I came in and signed it and he was the one who told me how much I had to pay, and I paid it.

Q. And that would be true of 1947?

A. That is right; all those years.

Q. 1948 and 1949?

A. And you can go back to 1944 and 1943 and ever since you made out income tax report.

Q. And it would be true of the Issaquah Creamery Company?

(Testimony of Hans Forster.)

A. Anything I signed in Hicks Taylor's office, I never looked at it or examined it.

Q. Just signed your name?

A. That is right.

Q. And wrote a check? [2639]

A. That is right.

In fact, I probably didn't write the check. The check was made by the office up in Issaquah.

Q. But you directed it to be made, didn't you?

A. I doubt it. Probably Taylor called Erickson and told him to make out the checks and to come in and sign them.

Q. One of the companies that you had that you didn't mention in your direct examination was the Hans Forster Company of Issaquah; do you recall?

A. I never knew I had one of those.

Q. Well, I perhaps can help you. Handing you what is marked as Exhibit—I guess this is one exhibit—Exhibit 230, and the check of the Amalgamated Sugar Company, dated August 3, 1949, for \$336.60, made out to the Hans Forster Company. It bears the stamped endorsement, which is on an invoice, to the Amalgamated Sugar Company. Do you know anything about that?

Mr. Moriarty: I might say that that went into 198, according to the stipulation.

A. Well, I never had a Hans Forster Company. I think that——

Q. (By Mr. Moriarty interposing): Was there such a company? [2640] A. No.

(Testimony of Hans Forster.)

Mr. Griffin: Just a moment. I was a rather long question that was asked him.

The Court: What is the—is there a question pending?

Mr. Moriarty: I understood there was.

Mr. Griffin: I am inquiring, did he complete his answer?

The Witness: I answered "No." I think Mr. Moriarty asked me if there was a Hans Forster Company and I told him there wasn't.

Q. (By Mr. Moriarty): Did they do any draying for the Amalgamated Sugar Company?

A. Do any what?

Q. Did the Hans Forster Company do any drayage or transportation for the Amalgamated Sugar Company?

A. Well, Alpine Dairy and Issaquah Creamery hauled sugar for them.

Q. Can you explain how that check is made out to Hans Forster Company and deposited in 198?

A. I couldn't explain it.

The invoice was made out by Mr. Erickson.

Q. By Mr. Erickson?

Mr. Griffin: That was a combination question. And I want the answer to show how it was made out and deposited.

Mr. Moriarty: All right.

Q. (By Mr. Moriarty continuing) You have answered that Mr. Erickson made it out.

Now, how was it deposited to 198?

A. He put it on my desk and told me he didn't

(Testimony of Hans Forster.)

have any place to put freight, any place in his books to put freight hauling, the credit we got for hauling sugar.

Q. But this was to a new company. Didn't he ask you about that, the Hans Forster Company?

A. No, he didn't ask me about it.

(Whereupon, the witness's name having been pronounced Fosster by Mr. Moriarty, the following colloquy was had, to-wit:)

Mr. Griffin: Let me get the name of that new company correct, please.

Mr. Moriarty: Hans Fosster Company.

Mr. Griffin: Forster.

Mr. Moriarty: Is it Forster? I didn't know that. I will be glad to reframe my question. I [2642] think you are mistaken. It is Hans Fosster Company.

Q. (By Mr. Moriarty): Have you completed your answer?

A. Mr. Erickson made out the invoice and at the top of the statement, he says Hans Forster Company.

Q. Was there any agreement with you?

A. With whom?

Q. To have it billed by Hans Forster Company?

A. There was no agreement with anybody. The original transaction was handled between—I think it was Mr. Morrissey from Amalgamated Sugar and Mr. Erickson. I think he not only corresponded with Mr. Erickson direct, but I think he is the one

(Testimony of Hans Forster.)

who turned in the order for the sugar. Mr. Erickson did. I didn't.

Q. Handing you—have you completed your answer? A. Yes.

Q. Handing you another check made out to Hans Forster Transportation Company, which is dated August 5, 1948, I will ask you if that billing is the billing in which this check was paid, if you know?

A. This is Hans Forster Transportation [2643] Company, Issaquah, Washington. I suppose that is the reason the check was made out to that.

Q. Is there a Hans Forster Transportation Company?

A. We do a lot of hauling, but I don't know of any company of that name.

Q. Well, so far as you know, there wasn't—do you know how that happened to get into 198?

A. Yes.

Q. How?

A. Because Mr. Erickson give it to me.

Q. Well, didn't the Issaquah or Alpine Trucks do the actual hauling for that?

A. That is correct, yes.

Q. And who evolved the name Hans Forster Transportation Company? If you know?

A. Well, I am sure I didn't.

Q. Did Mr. Erickson?

A. I don't know. You would have to ask him.

Q. You don't know? A. I don't know.

(Testimony of Hans Forster.)

Q. But when he came in and said he didn't know where to put it, you put it in 198?

A. That is right.

Q. And there was no entry on the books? [2644]

A. I don't know. He didn't tell me he had no entry.

Q. There was no Hans Forster Transportation Company?

A. I didn't ask any questions. I don't know if he ran it through Issaquah Creamery or Alpine Dairy. I don't know. He didn't tell me.

Q. At about the same time, there was an invoice to the Amalgamated Sugar by the Issaquah Creamery Company and a check for \$122.50 which was payable to the Issaquah Creamery Company. Would you tell the Jury how that got into 198?

A. For the same reason.

Mr. Erickson gave me the checks, and——

Q. (Interposing) That was manifestly an income of the Issaquah Creamery Company, which was a corporation?

A. There was some other checks that went into 198 that I used under Issaquah Creamery.

Q. I am asking you about this check.

A. Well, this is not—it wasn't handled any different than any of the other checks. If he didn't have any place to put it, I ran it in 198, which I used for my accounts to loan to individual corporations I have. [2645]

The Court: What is that last exhibit, Mr. Moriarty?

(Testimony of Hans Forster.)

Mr. Moriarty: Exhibit 230.

The Court: There is a second one there, is there not?

Mr. Moriarty: I think they are all one exhibit, are they not, Mr. Clerk, consisting of four checks, all of the Amalgamated Sugar Company?

The Clerk: Yes.

Q. (By Mr. Moriarty): May I ask you if you have any books of Hans Forster Transportation Company yourself?

A. I haven't got any books, period.

Q. You have no entries for the Hans Forster Transportation Company, either?

A. There is no books.

Mr. Moriarty: Will you give me 66-A?

(Whereupon, Exhibit was handed to Mr. Moriarty by the Clerk.)

Q. (By Mr. Moriarty): Mr. Forster, handing you Exhibit 66-A, which contains a refund check for the Seattle School District No. 1, which is a refund of the milk rebates, I will ask you how it happened that that check was not delivered to the Seattle School District No. 1? [2646]

A. Which one is that?

Q. I will find it for you. I can give you the date of it, if you want it.

A. This wasn't discount check to Seattle School District No. 1. The school bids were on a net basis. There was no discount.

Q. I am interested in how that happened to get into 198.

(Testimony of Hans Forster.)

A. Well, this check accompanied the school bid for Seattle School District No. 1 as——

Q. (Interposing) That is—that is the Seattle School District?

A. That is right, right here, and when we were awarded the bid, or wouldn't, the \$50 came back.

Q. And how did it get into 198?

A. Well, it is an Alpine Dairy Check, and came back to Issaquah, and Erickson put it with the discount checks. It has nothing to do with discounts.

Q. It doesn't bear the endorsement of the Seattle School District, does it?

A. They don't keep the checks.

Q. You say this was a bid?

A. A bid for milk for the school year.

Q. Are you sure it is?

A. I am positive of it. [2647]

Q. What is the date of it?

A. It must be before in the spring. I think we bid around June. The bids were always made on a net basis. There is no discount.

Q. This check was dated September 1, 1948.

A. Well, before school started, I guess.

Q. I thought the bids were made in June?

A. We make the bids in June, but they don't award them before school starts, and school starts about the 10th or 12th.

Mr. Moriarty: Is the Milky Way, Incorporated, check there?

Q. (By Mr. Moriarty): From that same exhibit, and in connection with your direct testimony,

(Testimony of Hans Forster.)

Mr. Forster, there is a check made out by yourself for \$834.74 to the Milky Way, Incorporated, and it is dated September 9, 1948, and it found its way into 198. Can you tell me what that check was for?

A. No.

Q. It bears your own signature?

A. In the first place, the check was made out by Mr. Erickson and I signed it.

Q. Otherwise, you wouldn't have signed a check to the Milky Way, Incorporated, for that amount of money? [2648]

A. I don't even know who the Milky Way, Incorporated, was. It was in 1948, and the only thing I know of is a Milky Way Dairy over at Pullman, but I couldn't tell you what this consisted of. Maybe you can find it in the books. That is the only thing I know about the Milky Way.

Q. The amount is a rather large amount?

A. That is right, yes.

Q. And you personally signed the check?

A. That is right.

Q. And you now have no recollection of it?

A. I don't know what it was written for. I don't know if we was going to buy something from the Milky Way Dairy and didn't buy it. I haven't got the slightest recollection what it was for, and all I know is that it was deposited there with the rest of the discount checks, or anything that Mr. Erickson didn't have a place for.

Q. And it was taken as a deduction by the Al-

(Testimony of Hans Forster.)

pine Dairy on its books and it found its way into Account 198?

A. I wouldn't know if it was taken as a discount. I don't know what.

Q. You don't claim that 198 as an Alpine Dairy account, do you? [2649]

Wasn't it in the name of Hans Forster personally? A. That is right.

Q. And weren't you the only one that had the right to withdraw from it? A. That is right.

Q. So that when it went into Hans Forster Account 198, it went out of the Alpine Dairy account?

A. I haven't got the slightest idea what it was for.

Q. You have no idea? A. I can't tell you.

Q. What was this place at Pullman that you suggested?

A. Well, there is a Milky Way Dairy in Pullman but that is the only recollection I would have. I wouldn't even know if they done any business sometime or not. I couldn't tell you.

Q. You have no other recollection?

A. No, none.

Q. It bears the stamped endorsement. You think you put the endorsement on it?

A. I wouldn't know.

Q. You don't know. You did put endorsements on these checks, and made personal deposits in 198? [2650]

A. That is correct. I don't know if I used the stamp or not, or if the stamp was put on by myself.

(Testimony of Hans Forster.)

Q. Why would you say that?

A. Because some of the checks were stamped when they gave them to me.

Q. And tell us about that. When Mr. Erickson came in and had no place to charge something on the books, he brought in the checks with stamps on them?

A. Some of those checks were on my desk, like I mentioned before, when those checks were in there probably once a week or maybe a couple of times a month I deposited them in the bank, and some of them had the stamp on it, and some of them I had the stamp put on by either Mr. Erickson or Miss Neukirchen.

Q. Well, this one doesn't have any endorsement at all except a rubber stamp?

A. I don't know. You probably find a lot of other don't have endorsements except the rubber stamp. It is the stamp we use.

Q. So that whenever you put the rubber stamp on it and it went into 198, it didn't have to have an endorsement?

A. I don't know. I never seen any of them come back. [2651]

Mr. Moriarty: Will you give me 67-A?

(Whereupon, exhibit was handed to Mr. Moriarty by the Clerk.)

Q. (By Mr. Moriarty): Handing you what is marked as Plaintiff's Exhibit 67-A, and calling your particular attention to check dated June 10, 1946, made out to Sears, Roebuck & Company for \$4.50,

(Testimony of Hans Forster.)

and signed by you personally, and bears the endorsement of Sears, Roebuck on the back of it.

Can you tell me if that endorsement of Sears, Roebuck & Company is in your handwriting?

A. No.

Q. In whose handwriting is it?

A. Mr. Erickson.

Q. Now, you wrote the check, did you?

A. I didn't write the check. I just signed it. We had hundreds of those. A whole pile of them, and go ahead, and sign them, and send them in.

Q. You knew where Sears, Roebuck & Company was, didn't you?

A. Well, I haven't explained to you just how those things happened.

Q. Well, explain it.

A. I can explain definitely Sears and Roebuck.

Q. All right.

A. Sears and Roebuck was our customer. We had a certain discount system that was on a graduated scale, and when a customer quit us, or if a customer closed out, probably the check would go down to the Alpine Dairy, and, as most of them, it didn't get there until the 20th, or sometimes the 25th and in the meantime, if a customer quit us, we didn't give him the discount. There was no obligation to give them it, and if an account quit and went to our competitors, there wasn't any contract we had, and we didn't give discount and if anybody closed business and went out of business, some of the discount checks came back, and that is what

(Testimony of Hans Forster.)

happened at Sears and Roebuck, and when they quit us, I suppose the check came from the sales department and back out to the Creamery again, where it originated, and Erickson——

Q. (Interposing) Put it on your desk?

A. Put it on my desk after he endorsed it and it went into——

Q. (Interposing) Account 198?

A. Account 198, that is right.

Q. Why didn't it go into the account of the Alpine Dairy? [2653]

A. All those checks came back because they originated——

Q. (Interposing) Wasn't this a discount——

Mr. Griffin: (Interposing) I submit, if the Court please——

Mr. Moriarty: Excuse me.

Q. (By Mr. Moriarty continuing): Wasn't this a discount check and a deduction on the Alpine Dairy books?

A. I don't know if it was a deduction, Mr. Moriarty, or not, in Alpine's books. It was a discount check of the Alpine Dairy.

Q. And——

A. (Interposing) Can I finish?

Q. Surely. I would be very happy.

A. All right. All of the checks was made out at Issaquah Creamery, both for Alpine Dairy and Issaquah Creamery, so when the checks came back from the Sales Department, they went back under the instructions from Mr. Bezeau and he said he

(Testimony of Hans Forster.)

had instructions from Mr. Taylor to send them to Issaquah.

Q. All right; when they come to Issaquah, why were they not deposited to Alpine Dairy's account?

A. Because Issaquah Creamery didn't have that [2654] account.

Q. Why not the Alpine Dairy account?

A. Because Mr. Bezeau said Mr. Taylor told him to send them back to Issaquah.

Q. They did get back to Issaquah Creamery and did they get into 198?

A. Well, of course, after being here two months, I realize now that Mr. Erickson should have known to cancel out six dollars, or whatever it may be.

Q. It is \$4.68.

A. All right. But he didn't do it that way.

Mr. Keesling: May I ask that the examiner stand over here?

Q. (By Mr. Moriarty): You knew, didn't you, Mr. Forster, that when you deposited a check of the Alpine Dairy in Account 198 at the Washington State Bank at Issaquah that an account of the Alpine Dairy at the Bank that it was drawn on would honor it and it would result in the Alpine Dairy paying this account 198 a sum of money; you knew that?

A. As far as I was concerned, it never entered my mind that there was anything wrong about the [2655] situation. It went into account 198, and I used 198 to finance Alpine Dairy, Alpine Ice Cream Company, and Issaquah Creamery. Account 198

(Testimony of Hans Forster.)

was exactly the same thing as the Issaquah Creamery or Alpine Dairy or Alpine Ice Cream bank account. It never entered my mind there was anything wrong about it.

Q. All right; let's pass for a time to the Renton Ice Cream Company.

Mr. Moriarty: I will ask for Exhibit 203.

(Whereupon, exhibit was handed to Mr. Moriarty by the Clerk.)

Q. (By Mr. Moriarty continuing): You know Mr. Schneider? A. That is right.

Q. And Mr. Taylor was present when you took over or became associated with the Renton Ice Cream Company?

A. Well, I don't think that he was present on the first few days when we talked about it, but when it was organized, Mr. Taylor was present.

Q. Well, as I understand it, you were the promotion man and went down to find out that the Renton Ice Cream Company was a good deal?

A. Oh, no.

Q. All right, tell us what you did before Mr. Taylor arrived? [2656]

A. Well, that isn't—you didn't make it in one day and Mr. Taylor arrived in the afternoon and the deal was closed. It took several weeks of negotiations, and Mr. Baskett, who had a service station in Issaquah, was peddling ice from house to house, and he was buying ice from Mr. Williams, and Mr. Williams, not having any children, and Mr. Baskett had three or four of them, got quite a liking for

(Testimony of Hans Forster.)

Mr. Baskett, and Mr. Williams was getting along in years, and approached Mr. Baskett if he was interested in trying to buy Renton Ice and Ice Cream Company, and they talked about it before they ever talked to me.

Then, Mr. Baskett, being a good friend of Mr. Schneider, asked him if he was interested in it. I think at that time he worked at the Issaquah State Bank, or Washington State Bank at Issaquah. So, Mr. Schneider is interested in it, and when they got into the deal, they found out they didn't have enough money. Mr. Williams wanted to get fifteen thousand dollars down and they needed a few thousand dollars for working capital, so they approached me and wondered if I wanted to come along, and I think that that is the time that Mr. Taylor entered the picture. That is the way it happened. [2657]

Q. All right, when everything was set for the deal with Williams and Baskett——

A. (Interposing) I didn't make the deal with Williams, because Baskett and Schneider made it.

Q. Who? A. Cal Baskett.

Q. Hal Baskett?

A. Cal and Ray Schneider.

Q. Cal Baskett and Ray Schneider made the deal with Williams? A. Yes.

Q. And you were in the background, I understand? A. That is right.

Q. Now, what was discussed about the way you

(Testimony of Hans Forster.)

were to get some of the money out of that Renton Ice Cream Company?

A. It was never discussed when we was together.

Q. It never was discussed?

A. No. In fact, I was surprised when I got the first check and I told Ray, "Thanks very much."

Q. What did you say to Mrs. Baskett?

A. Well, Mr. Schneider handled it.

She never mentioned it to me. [2658]

Q. She was working out in the labor end?

A. She worked out in the ice cream.

Q. And you got a check from her for \$1,158.50 on April 17, 1945?

A. That is right.

Q. Did you thank her?

A. I probably did.

Q. How did it come that the check was made out to Maizie R. Baskett for \$1,158.50 and a check on the same date made out to R. J. Schneider, for \$1,158.50, which is endorsed by both of them and finds its way into account 198?

A. Well, they send it to me.

I don't know where you expect me to put it. They told me it was my money, and said Taylor made distribution, made arrangement on it, and that is all I know about it.

Q. That just came out of the clouds?

A. What do you mean "clouds"? It came from Renton.

Q. Was it mailed to you or delivered to you?

A. Well, I don't know if Schneider mailed it

(Testimony of Hans Forster.)

to me, or gave it to me personally. I think he mailed the checks.

Q. And you thanked him. There was no other [2659] conversation?

A. No, he said Taylor handled the distribution. How it was based, or why it was done, you will have to ask him.

Q. Did you ask Taylor?

A. Yes, I asked Taylor.

Q. And what did you ask him about, and when?

A. Well, after I got it.

Q. That would be after April 17, 1945?

A. I would think so, yes.

Q. And can you tell us what you said to Mr. Taylor, and what he said to you?

A. I asked him—I told him—I got this check, and he said that that was my share out of Renton Ice and Ice Cream.

Q. Didn't you think it was peculiar that it was made out in two checks, one to R. J. Schneider and the other to Maizie R. Baskett, instead of to you?

A. It wasn't peculiar to me, because he handled my accounts and he is the one that handled my affairs, and if he arranged it, it was good enough for me. I don't know why I should ask any questions about it.

Q. Did you say anything about paying taxes on this to Mr. Taylor at that time?

A. Well, we didn't discuss taxes. I didn't [2660] figure it had anything to do with it.

Q. What did you think this was, a present?

(Testimony of Hans Forster.)

A. Well, maybe it was. You have to ask Mrs. Schneider and Mrs. Bassett if they make me a present. I don't know why they distributed it, or what the deal was. Mr. Taylor knew about the check and he made out my income tax. If he thought it was wages, he should put it in, and if he figured it was wages, he should have put it in, and if it was a present, he should still put it in. I don't know.

Q. Would it surprise you to know, Mr. Forster, that your signature is on those two checks?

A. That is right.

Q. And you were present when they were made out?

A. Not necessarily. He probably came up to the Creamery with a bunch of checks and had me go ahead and sign the checks.

Q. I understood your testimony to be previously that he mailed it to you?

A. I wouldn't know; either mailed it or brought it up.

Q. Well, then, when these checks——

A. (Interposing) You expect me to go back [2661] ten years and remember, Mr. Moriarty, how it happened. I know I got the check, and it went into my account. How Mr. Taylor handled it on the books, I haven't got the slightest idea.

Q. But I think one would remember when they made out a check for that sum of money?

A. Ten years back?

Q. Yes. A. This wasn't the only one.

Q. It is not ten years yet?

(Testimony of Hans Forster.)

A. It is awful close.

Q. It will have to run until next month before it is nine.

Mr. Keesling: I can't hear counsel.

Mr. Moriarty: I will raise my voice.

Q. (By Mr. Moriarty): Your signature is on each one of these checks; correct?

A. That is right.

Q. And you have no recollection of any conversation about it except present?

Mr. Griffin: Except what?

Q. (By Mr. Moriarty continuing) Except as a present, a gift?

Mr. Griffin: That is not his testimony. [2662]

Mr. Moriarty: Well, he can correct it.

Mr. Keesling: May I ask Counsel, by "signature," does he mean "endorsement"?

Mr. Moriarty: No, sir. His signature as a maker, co-maker.

A. Well, I mentioned before that I only signed checks down there on an emergency basis, when there wasn't anybody else or when somebody went out of town or when Mr. Taylor didn't sign and Mr. Schneider came and brought the checks up.

From what I see on the back I think two of the checks are mine.

Mr. Moriarty: Will you give me Exhibit 205?

(Whereupon, Exhibit was handed to Mr. Moriarty by the Clerk.)

Q. (By Mr. Moriarty): That is your testimony

(Testimony of Hans Forster.)

in regard to that exhibit; you have completed your testimony in regard to this exhibit?

A. If you are through asking questions, yes.

Q. All right, on the Renton Ice Cream Company, I am handing you check in Exhibit 205, which is made payable to Hicks Taylor, and I will ask you if that recalls a conversation that you had with Mr. Schneider about Hicks Taylor drawing a \$600 check that was out [2663] of order?

A. Yes, Ray Schneider mentioned it to me. I don't know what occasion that he mentioned it, that Taylor showed this check to himself for \$600 and I asked him "What for?" And he said, "Well, that is what I asked him, but he said he thought that he was entitled to it."

And I told Ray at that time I didn't like the way it was done. I figured that Taylor should have said something to me about it, or should have given him—should have given Ray Schneider—an *examination*.

He just told Ray he figured he was entitled to it, and wrote himself a check.

Q. Well, did you hear Mr. Schneider's testimony that you cussed about it; do you recall that?

A. That is as much as I cussed. I told him I didn't like the way it was done, that he didn't have to come in the back door, but come in the front door, and that is the exact words I used, I think.

Q. I understood your testimony yesterday that you didn't fix any payments of Mr. Taylor's at any

(Testimony of Hans Forster.)

time, and that he could write a check at any time in any amount? [2664]

A. It sure looks like it.

Q. Is this the only one he wrote?

A. I wouldn't know.

Q. But Mr. Schneider reported this to you?

A. I think this was the first time.

Q. And that was the subject of conversation with Mr. Schneider; how often were you down at the Renton Ice Cream during one month?

A. Oh, that would vary. I might drop by for two or three times a month, or maybe Mr. Schneider would come up to Issaquah, and we discuss business there, or come to the office at Alpine Dairy, and we had a lot of telephone conversations. I didn't spend any time hardly in there. Probably go by and talk to them for an hour, or one-half hour, whatever the case would be, in buying trucks or having trouble with his ice machines.

Mr. Moriarty: Will you give me Exhibit 75 and Exhibit 76?

(Whereupon, exhibits were handed to Mr. Moriarty by the Clerk.)

Q. (By Mr. Moriarty): You got other money from the Renton Ice Cream Company, also, didn't you, Mr. Forster? A. Yes. [2665]

Q. This was in 1947, and it involves a Cashier's check payable to you in the sum of \$2,755, drawn on the Peoples National Bank of Washington, Renton Branch.

(Testimony of Hans Forster.)

Was that the subject of any discussion between you and Mr. Schneider?

A. Well, I guess we discussed it after I got the money and he said that is the situation that Hicks Taylor arrived at, and he gave me a check and told him to mail it to me.

Q. Did you make any memorandum at that time so that you could report it on your income tax?

A. I deposited it in my savings account.

Q. Which savings account?

A. 198. I had only one of them.

Q. Didn't you have a savings account in the Greenwood Branch of the Seattle First National Bank?

A. That was a savings account to take care of the contract. I had one at Peoples Bank.

Q. And one at Renton, didn't you?

A. That is right.

Q. So that you had two or three savings accounts?

A. Well, I didn't in the later years.

Q. Handing you what is marked as Plaintiff's [2666] Exhibit 75, which appears to be a check for a different amount than \$2,755. This is for \$2,685.

Is that the same division of profits of the Renton Ice and Ice Cream Company or in what formula was it figured, if you know?

A. I don't know in what formula it was figured. I know that Mr. Schneider told me that Mr. Taylor made out the distribution, and he told them to

(Testimony of Hans Forster.)

draw the checks, and he gave them the figure in the check that he should send me.

Q. Did it seem peculiar to you that that was made out as a cashier's check coming from the Renton Ice Cream Company?

A. I don't know why it should be peculiar. He told me Taylor told him to draw the check and divide it up.

Q. But the form of the check is a cashier's check?

A. It was not peculiar to me. I was glad to get the twenty-seven hundred dollars. I never figured there was anything wrong about that transaction down there.

Q. Well, on its face, it doesn't show that it is for anything except payable to you?

A. That is right. [2667]

Q. Didn't you make inquiry when you got a cashier's check in the mail from Mr. Schneider, or from someone?

A. Yes.

Q. Why that cashier's check was sent to you?

A. I told you that he said that Mr. Taylor gave him distribution, and that was my share.

Mr. Moriarty: I think, your Honor, the cross-examination will extend further.

The Court: Yes. We will recess, Ladies and Gentlemen of the Jury, for the day, at this time. The Court calls your attention to the admonition given you on similar occasions, and ask that you heed the admonition on this occasion. You may be excused now until tomorrow morning at ten o'clock.

(Testimony of Hans Forster.)

(Whereupon, the Jury retired from the courtroom.)

* * * * * [2668]

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated. It is stipulated that the Jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Moriarty.

Mr. Moriarty: Thank you, your Honor.

HANS FORSTER

upon being recalled as a witness for and on behalf of the Defendant Forster, and having been previously duly sworn, testified as follows:

Cross Examination (continued)

Q. (By Mr. Moriarty): I think at the time we adjourned, Mr. Forster, we were inquiring of the cashier's checks of the Peoples National Bank of Washington, dated September 12, 1946, and September 12, 1947. These were received by you in what way; by mail or by physical delivery?

A. I couldn't tell you today whether it was [2678] mailed, or if Mr. Schneider delivered them to me in person. I couldn't tell you.

Q. And they were deposited in 198?

A. That is right.

(Testimony of Hans Forster.)

The Court: Those are Exhibits 75 and 76?

Mr. Moriarty: Yes, your Honor.

Q. (By Mr. Moriarty): Here is an exhibit, which is also a cashier's check, Exhibit 77, dated August 29, 1945, payable to you in the sum of \$2,755; and I will ask you if you received that check?

A. I would think so. It is my signature on the endorsement here.

Q. That check was deposited in the Peoples National Bank, Renton Branch. Could you give us an explanation of why it was deposited there instead of 198?

A. Well, I had a savings account at Peoples National Bank in Renton.

Q. How is that reported to Mr. Taylor?

A. How was it reported to Mr. Taylor? Well, Mr. Taylor made the division of the Renton Ice and Ice Cream.

Q. But he didn't know what bank it was deposited in? [2679]

A. He must have known it was income.

Q. How would he know it was income?

A. He knew I got the check.

Q. You made out the checks for those?

A. I made out the check for what?

Q. For that original check of the Renton Branch, to be paid into the——

A. (Interposing) You mean I made out the check?

I never made out any check at Renton Ice and

(Testimony of Hans Forster.)

Ice Cream Company. I signed some of the checks, but I never made out any.

Q. Then I will redraft the question. If you had signed checks, did Mr. Taylor also sign checks in blank? A. I think he did, yes.

Q. So that Mr. Taylor wouldn't necessarily know how these checks were made out, even though his signature was on them?

A. On the checks in Renton, you mean?

Q. Yes.

A. Well, I wouldn't know except Mr. Schneider told me that he made the division of the amount so Mr. Taylor must have known how much I got, and how much Schneider got, and how much Mrs. Baskett got. [2680]

Q. Why wasn't a check made directly to you each of these times?

A. I couldn't tell you. I didn't have anything to do with the division, or how it was handled, if it was a salary or dividend. Taylor knew all about it from the first time there was a division made until the last time there was a division made.

Q. Didn't it strike you peculiar, at least, that you were getting a cashier's check from a Renton Bank for a firm that you had an interest in, instead of a check directly?

A. No, it didn't strike me peculiar, because Schneider told me it was a division that Mr. Taylor made. Whether he gave the Renton Ice and Ice Cream check or cashier's check, it didn't.

Q. I call your attention, Mr. Forster, to the

(Testimony of Hans Forster.)

fact that that doesn't even show it is a Renton Ice Cream check.

A. I say, it didn't make any difference which way it was.

Q. Did it make any difference how you received the money? A. How I received the money?

Q. Yes.

A. No, not so far as I was concerned. [2681]

Q. And it didn't make any difference how it was reported?

A. Just what do you mean, how it was reported? By Renton Ice and Ice Cream Company?

Q. How you handled it?

A. I don't know how they handled it. Mr. Schneider told me they made the division, and the other two had the likewise share; we were one-third partners. That is all I know.

Q. During this time of the Renton Ice and Ice Cream Company, you never received a check payable to you personally, is that correct?

A. Made out to Hans Forster?

Q. Made out to Hans Forster.

A. Well, these are.

Q. Well, that is from the bank.

A. This is a cashier's check.

Q. That is from the Peoples Bank at Renton?

A. Well, but somebody must have put the money in there in order to get a cashier's check.

Q. Now, you did that there according to what plan? A. Well, Schneider—

(Testimony of Hans Forster.)

Mr. Griffin: (Interposing) Just a moment, I will object to that. [2682]

Mr. Moriarty: I will withdraw the latter part of the question.

Q. (By Mr. Moriarty): Who did that?

A. Mr. Schneider sent me the check, and he is the one who got the cashier's check.

Q. Did you have any conversation with Mrs. Baskett as to why she would give you part of her check payable to her?

A. In fact, I don't think I got the check from Mrs. Baskett. I got it from Mr. Schneider.

Q. Did you see the checks yesterday made payable to Maizie Baskett?

A. That is right.

Q. And endorsed by Maizie Baskett and made payable to you? A. That is correct.

Q. And deposited in Account 198?

A. It was no crime for me to deposit it in 198 if somebody can give me a check.

Q. Wasn't there some reason for Mrs. Baskett endorsing that check to you?

A. You should ask Mrs. Baskett when you had her on the stand. She didn't tell me. I got the check from Mr. Schneider, and he said that is the [2683] division Mr. Taylor made out. How he handled it on the Renton books, I don't know. So far as I know, it was a check sent to me.

Q. Was there at any time a discussion between you and Mr. Taylor or between you and Mr. Schnei-

(Testimony of Hans Forster.)

der about the way to handle these checks so they wouldn't be payable directly to you?

A. There never was any discussion about it.

Q. Was there ever any curiosity on your part?

A. So far as I was concerned, I never asked a question. When Mr. Schneider told me Mr. Taylor made the division. When he sent me the checks made out to him and endorsed or sent me the cashier's check, I never asked any question.

Q. When you got this check from Maizie Baskett, weren't you curious why she was giving you a check for \$1,285?

A. I wasn't any more curious about her sending me her endorsed check, than Mr. Schneider sending me his.

Q. What was the arrangement then between Baskett, Schneider and yourself, originally?

A. There was no arrangement. We was one-third stockholders, and as far as I was concerned, there was [2684] no arrangement between us, as far as any dividends was concerned, or any salary payment, so far as I was concerned. They had a certain salary that we agreed on.

Q. And you didn't care what you got out of it?

A. Well, as long as I got my share.

Q. How do you know you got your share?

A. As long as Taylor handled the books, and made distribution, it was good for me.

Q. When you got a check from Maizie Baskett, that didn't mean you were being paid by the Renton Ice Cream, did it?

(Testimony of Hans Forster.)

A. Well, of course, I can repeat it again. I left it up to Mr. Schneider. He was the president and manager of the corporation, and Mr. Taylor was the accountant, and had charge of the books, and when he told me this was my share, he didn't tell me it was a dividend, he didn't tell me it was salary. That was satisfactory to me and I put it in my savings account. I don't know what is wrong about that.

Q. And it didn't appear in your income tax report? A. I don't know if he didn't. [2685]

Q. You found out it didn't, didn't you?

A. Only the last two months.

Q. Only here? A. Here.

Q. In the last two months?

A. When the investigation started, by that time I didn't know anything about it.

Q. So that I understand your testimony to be that during the entire time, you were associated with the Renton Ice Cream Company, you received checks from Mrs. Baskett and didn't—and cashier's checks from the Renton Bank, and it didn't arouse your curiosity as to the way it was being paid?

A. I don't know why it should arouse my curiosity. The people that handled it at Renton Ice and Ice Cream Company was partners of mine. Mr. Taylor was my associate. He was secretary and treasurer of the company, and when he sent me up a check, I asked Mr. Schneider what it was, and he said Taylor made the distribution and he said that was my share.

(Testimony of Hans Forster.)

That is all.

Q. I am talking about the checks you received.

A. I am talking about the checks.

Q. Wasn't it peculiar to be receiving a [2686] check from Maizie Baskett, whom you knew very slightly, and who was an employee of the Renton Ice and Ice Cream Company, a day laborer, sending you a check in that amount?

A. Well, Mr. Moriarty, I knew Mrs. Baskett before she was married to Mr. Baskett. I knew her when she was Miss Harrington, and she wasn't a day laborer there, as far as I was concerned. She was one-third stockholder.

Q. Wasn't she working in the labor department?

A. What do you mean "labor department"? She worked in the ice cream department, just like Mr. Schneider run the plant.

Q. Having her working there, didn't it occur to you to talk to her about why you were getting her checks?

A. Of course not; I don't know why I should have. The arrangement was made by two people, I definitely trusted, and not only two, but so far as she was concerned, her husband, I always trusted him all the way through. I don't know what is peculiar about it.

Q. If you were one-third owner of the Renton Ice and Ice Cream Company—— [2687]

A. (Interposing) That is right.

Q. (Continuing) ——and entitled to one-third of those profits, why didn't you receive a check

(Testimony of Hans Forster.)

from the Renton Ice Cream Company for your dividend or salary, or whatever it was?

Mr. Griffin: I object. It is the sixth time it has been asked and answered.

Mr. Moriarty: I will ask the seventh, if permitted.

Mr. Griffin: I will withdraw the objection and you can ask it seven times.

Mr. Moriarty: And we might get an answer.

Mr. Griffin: Seven times.

The Court: Do you wish——

The Witness: I would like it repeated.

The Court: Mr. Reporter, read the question.

Mr. Moriarty: Read the question.

(Whereupon, preceding question in two parts and interposed answer was read by the reporter.)

A. Well, the division of this check was made by the President of the corporation, and by the Secretary and Treasurer, Hicks Taylor. If they figured it as dividend, it didn't say anything on it. If they figured it as salary, I didn't have the [2688] slightest idea. I was satisfied it was handled in the right manner. I don't know why I should have questioned them.

Q. (By Mr. Moriarty): I mean the way you were getting paid?

A. I don't know why I should have questioned it.

Q. It didn't make any difference to you?

A. I don't know why it should have.

(Testimony of Hans Forster.)

Q. That is your final answer?

A. That is right.

Q. I will ask you: did you ever receive a check from the Renton Ice Company—Renton Ice Cream Company—payable directly to you at any time during 1945 through 1949?

Mr. Griffin: Objected to as repetitious.

The Court: Objection sustained.

Mr. Moriarty: Will you give me Exhibit 142?

The Clerk: You have it.

Q. (By Mr. Moriarty): Now, will you tell the Jury again your relationship to the Apex Farms?

A. I was president of Apex Farms, and I think fairly close to two-thirds interest in Apex [2689] Farms.

Q. And Apex Farms was handled by Mr. Chapman and Mr. Hofeditz? A. No.

Q. The checks were signed by them, weren't they?

A. I think there was one more signature out there besides Mr. Chapman and Mr. Hofeditz.

Q. Was that your signature?

A. I don't know. I don't think I ever signed any checks there. I am not so sure about it, though.

Q. Handing you these checks, with particular reference to the May 19th, May 31st checks, I will ask you to read the amounts of those checks in 1949, during May and June of 1949. If you will read those checks in that series?

A. You mean out loud?

(Testimony of Hans Forster.)

Q. Yes. A. May 31, 1949, \$1,427.15.

Q. That went into 198. Would you give an explanation of how it went into 198?

A. Yes. These checks were Equalization checks between the milk pool that was handled by the different brands, between Finstad and Utgard, and Apex Farms, and Alpine Dairy and Issaquah Creamery. Alpine Dairy [2690] was the one that established a base with Consolidated Dairy Products Cooperative where we bought the milk from, and the milk that came from Finstad and Utgard and Apex Farms was based and paid for on a base to the producer that had probably around one-third, or it all depends on what the percentage was during those months, being paid at the platform price, which is the price that goes into bottled milk and cream.

The other one-third to Apex Farms on a surplus basis, which was probably a difference of \$1.50 a hundred. As long as Alpine Dairy made the base, or Consolidated Dairy Products, then Alpine Dairy was entitled to the difference between the platform price and the surplus price that was paid to Finstad and Utgard because Apex Farms didn't have any other production except fresh milk.

In other words, Apex Farms had to pay in this pool arrangement 100 percent for all of the milk they received at platform price, but during the surplus season, they got some milk at the lower price, and as long as Alpine Dairy had to supply that milk in the fall and winter months, when the milk was

(Testimony of Hans Forster.)

shorter, to Apex, that is the reason they was entitled to this difference between Class 1 and Class 2. The [2691] difference was the amount.

Q. That is payable to the Issaquah Creamery Company? A. That is right.

Q. How did it get into your account?

A. Well, it wasn't correct, because the reason it came out to Issaquah Creamery is because Mr. Erickson at Issaquah figured the pool.

In other words, the pool arrangement with Consolidated was made with Issaquah Creamery. It wasn't Issaquah Creamery——

Q. (Interposing) That was entitled to it?

A. No; because the platform sales of fluid milk was established by the Alpine Dairy. It wasn't established by the Issaquah Creamery, because that is where we handled the surplus and the manufacturing end.

Q. How did that check and others made payable to Issaquah Creamery get into your account?

A. Because Mr. Erickson didn't have any place to put it, to credit it, on the Issaquah Creamery books, so he gave it to me.

Q. Well, the Issaquah Creamery Company had a miscellaneous account, didn't it?

A. I don't know. If he had an account to put it [2692] in, he wouldn't give it to me. I didn't ask for it.

Q. Let me review your testimony:

I understand your explanation of how many of these things got into your account was that Mr.

(Testimony of Hans Forster.)

Erickson came in and said he didn't have any place to put it on your books? A. That is right.

Q. Didn't that create any curiosity on your part that there wasn't some place on the books?

A. I asked several times, and he said as far as he was concerned, there was no way for him to go ahead and credit it.

Q. He could put it in the bank?

A. It went in the bank.

Q. But in your personal bank?

A. So far as I was concerned, the Alpine Dairy account or Alpine Ice Cream account, or Issaquah Creamery account was all mine. I didn't make any distinction.

Q. And if he didn't know where to put it and told you that, you said, "Give it to me"?

A. I don't know if I said "Give it to me," or not. He could either put it on my desk or put it in my desk drawer. [2693]

Q. Well, the total of those in Exhibit 142 amounts to \$25,048.19, and they all went into your account? A. That is right.

Q. And they were all payable to the Issaquah Creamery Company?

A. So far as Issaquah Creamery was concerned, if it should have went any place if it wasn't correct trying to put it in my account, it should have gone to the credit of Alpine Dairy account, because they established the base.

Q. Why didn't you tell him?

A. If I knew then what I know the last four

(Testimony of Hans Forster.)

years, certainly a lot of things would have been different.

Q. You knew April 10, 1946, to September 7, 1949, the checks were being continually issued to the Issaquah Creamery Company from the Apex Farms, but you were depositing them in the amount of over \$25,000 which was properly Alpine's?

A. So far as I was concerned, Alpine Dairy and Hans Forster was the same thing. I didn't see any distinction between them.

Q. And I understand you to say account 198 was the same thing too? [2694]

A. Account 198 is where I got the funds for Issaquah Creamery or Alpine Dairy or Apex Farms.

Q. But Apex Farms took a deduction for this payment on their income tax return, didn't they?

A. I wouldn't know, Mr. Moriarty.

Q. This was a proper charge that was due according to the books at the Issaquah Creamery Company?

A. I wouldn't know. I never even looked at my income tax return, and I never seen Apex Farms'. I didn't sign it, and even if I did, I wouldn't have looked at it.

Q. You stayed away from—was the reason you stayed away from looking at your income tax returns the fact that you knew that it didn't reflect a true picture?

A. Well, I don't know, if you want to go back——

(Testimony of Hans Forster.)

Q. (Interposing) No, I am just asking you that question.

A. All right; so far as I am concerned, I never looked at income tax returns from the first time I ever signed one.

I don't know what year that was, maybe [2695] in the '30s. I never looked at one of them.

Q. That isn't answering my question.

Mr. Griffin: I think it is.

Q. (By Mr. Moriarty continuing): I am asking you if the fact that you didn't look at the income tax returns was because you knew that the tax returns did not reflect the facts?

A. That didn't have anything to do with me for not to look at the income tax returns.

Q. You knew——

A. (Continuing) I never looked at one of them from the first one that I had to sign, I don't know what year it was, until the first one was made out by Touche, Niven, and Smart. That is the first time they said I had to take a look at an income tax return.

Q. Although you were paying money, thousands of dollars, on your income tax return?

A. That is right, and so far as I was concerned, I paid the right amount.

Q. During all these periods, it never occurred to you to say to Mr. Erickson, "Those should be made out to Alpine Dairy. those Apex Farm checks"?

A. No, so far as I was concerned, Hans Forster and Alpine Dairy was the same thing. I never

(Testimony of Hans Forster.)

questioned and he never asked me, or Mr. Taylor never asked me. [2696]

Q. All right——

Mr. Keesling: (Interposing) If I may ask, counsel, the checks you referred to, were they made out by Apex or by——

Mr. Moriarty: (Interposing) Made by Apex in favor of the Issaquah Creamery Company and were brought in by Mr. Erickson to Mr. Forster because he didn't have any place to put them.

Mr. Keesling: The makers were?

Mr. Moriarty: Mr. Chapman, and, if I pronounce the name properly, it is Hofeditz in each instance, I believe.

Will you give me Exhibit 149?

(Whereupon, exhibit was handed to Mr. Moriarty by the Clerk.)

Q. (By Mr. Moriarty): Mr. Forster, you became interested in Finstad and Utgard sometime in 1943, wasn't it?

A. I would think so. I can't tell you the exact date.

Q. And you became interested in that because Cook and Grant, that were handling the ice cream machines, were working the market both ways, as I recollect?

A. I don't know if you call it "market both ways." [2697]

Q. Well, tell us what your conversation was with Mr. Cook or Mr. Grant about he having an interest

(Testimony of Hans Forster.)

in Finstad and Utgard, and that you kidded him about it?

A. Well, of course, before Mr. Grant came to be Northwest District Manager for Mills Novelty Company, the people that made those ice cream freezers for those ice cream stores, Mr. Husset was the man I dealt with before, and then Mr. Grant replaced him. We worked together for quite a number of years, and I helped him make down payments to some of the customers, and that way, we got mix contracts on an overage basis at ten cents a gallon, or whatever the case may be, until part of this down payment was paid off, and one of the mix companies that was a competitor in the field was Finstad and Utgard.

Mr. Grant actually didn't tell me. I got it from somebody else that he was making a hook-up or made a hook-up, with Finstad and Utgard, and, naturally, he was taking his merchandise agreements, or down payments, up to Conway.

So, when I met him one day, I kidded him about it. "I suppose you figure there is more money in making the mix than going out and selling [2698] the freezers, and you like to get a profit in making the mix, too, as well as selling the freezers"; and he said, "I think you probably got it figured out"; and that is the reason I got it figured out, and we let it alone for awhile, and the next time I seen him, he said, "Would you be interested in buying Finstad and Utgard out?"

Q. He took your hint, then?

A. What?

(Testimony of Hans Forster.)

Q. He took your hint that he had better get out of Finstad and Utgard if he wants to do business with you?

A. If you know Mr. Grant, he doesn't take hints.

Q. You were hinting, Mr. Forster?

A. No, I kidded him.

Q. And, as a result of that meeting, he indicated he was willing to sell to you; is that your testimony?

A. Well, if you take a look at the figure what those boys paid for it, and afterwards what I paid to them, they made a very nice profit on it.

Q. You didn't do too badly, either, did you?

Mr. Griffin: I didn't hear. [2699]

Q. (By Mr. Moriarty): You didn't do too badly, either, did you?

A. At the time I bought it?

Q. No, during these years?

Mr. Griffin: Well, that is a conclusion. The ultimate lawsuit may show whether he did or not.

Q. (By Mr. Moriarty): Mr. Forster, handing you Exhibit 149, which purports to be a series of checks from 1943 to February 28, 1950, made out to Finstad and Utgard—by Finstad and Utgard to Mary Finstad, as I recollect your testimony at the initial meeting, you had an arrangement with Mr. Egeness, is that correct? A. Egeness?

Q. Egeness, about salary; is that correct?

A. That is right.

(Testimony of Hans Forster.)

Q. And what did you tell Mr. Egeness about salary?

A. We made a salary on the basis of \$300 a month, plus 10 percent bonus on the profit. That was the arrangement I had with Mr. Egeness.

Q. And Mr. Taylor was there?

A. I don't know if Taylor was there when I had the arrangement with Egeness, so far as salary was concerned. I wouldn't know.

Q. You heard Mr. Egeness testify, did you not?

A. Yes. [2700]

Q. And he testified that his salary was raised to \$600?

A. Well, him and I never had that arrangement.

Q. Well, who made the arrangement?

A. Hicks Taylor did.

Q. When was that; were you present?

A. Not when he made the arrangement with Egeness as far as that part of the salary. Egeness and I had an understanding of \$300 a month and 10 percent of the profits from the time that we started until we sold out.

Q. From the day you became connected with Finstad and Utgard, these payments started to go to Mrs. Finstad?

A. I wouldn't know. I never looked at the books, and never made out any checks or asked questions. Taylor and Verne Egeness handled it, and after I am in there, we agreed on the buying price and that is all I had to do with it.

Q. Mr. Taylor reported to you at the time Mr.

(Testimony of Hans Forster.)

Simonson raised his salary down at Simonson and Forster by \$100? A. That is right.

Q. But during this period of time, he never made [2701] any comment about Mr. Egeness's payments to Mrs. Finstad?

A. Of course, since I have been in here now, I know all about this. You are trying to confuse me on the issues.

Q. I am not trying to confuse you.

A. You want me to tell you what actually happened during the time when we went in there ten years ago?

Q. Yes.

A. Well, that is the definite fact and recollection I have of the deal. Egeness and I talked about salary and he told me he was getting, under the arrangement when he was one-fourth owner with the Finstad and Utgard deal, was run, and I told him I would just as soon work on a bonus basis, if he could show a profit he could have ten percent of the profits beside the same salary he was getting under the arrangements with Grant and Cook and—I don't know who the other partner was, but Grant finally bought him out, and he said it was perfectly satisfactory with him, and it was satisfactory from the day we bought it until the day we had to sell it.

Q. All right; in 1944 in a financial statement you claimed one-third interest in Finstad and Utgard [2702] on your financial statement, didn't you?

(Testimony of Hans Forster.)

A. I wouldn't know. If I had one-third interest, that is what they claimed. I didn't put it down on the paper. So far as I knew, I was buying the contract from the balance due to Mrs. Finstad and if it was one-third, or, as far as I was concerned, it was 100 percent owner when everything was paid. When it was paid, I don't know.

Q. You paid out Cook and Grant?

A. That is right, and I paid out Egeness.

Q. And you paid out Egeness and took over the contract that these three had with the widow Finstad?

A. That is right.

Q. And during this period of time, Mr.—Mrs. Finstad got \$300 a month payable in quarterly installments that were charged against Mr. Egeness's salary?

A. I never knew it was for or against.

Mr. Griffin: I can't follow when both are talking at the same time, if the Court please.

Mr. Moriarty: Excuse me. You may finish your answer.

The Court: I believe the answer interrupted the question. I suggest you restate the question. [2703]

Mr. Moriarty: I would like to have him read it.

The Court: All right, Mr. Reporter; read the question.

The Witness: Read the question.

(Whereupon, preceding question was read by the reporter.)

I guess she did. I wouldn't know.

Q. (By Mr. Moriarty): Now, calling your at-

(Testimony of Hans Forster.)

tention to the same exhibit with particular reference to two checks dated February 28, 1950, payable to Mrs. Mary Finstad for \$2500.00 and another on the same date for \$2,000, dated February 28, 1950, and not then signed by Mr. Egeness but signed by Mr. Utgard; do you have any recollection of that event where forty-five hundred dollars was paid to Mrs. Finstad on February 28, 1950?

A. Well, so far as I knew, that finished up the contract.

Q. Well, as I understand from your testimony at about this time you and Mr. Taylor and Mr. Erickson went up to Conway because Mr. Taylor was having some difficulty and Mr. Erickson was to be familiarized with the books. Would that refresh your recollection?

A. No, I think that was at a later date [2704] than February 28th.

Q. And on that date, the salary charges ceased being made to Mr. Egeness's account; does that refresh your recollection?

A. Well, I don't know anything about the arrangements of Mr. Egeness's salary account. His arrangements with me on the salary was 10 percent of the profit, and it lasted until we sell the business and we had the arrangement.

Q. Did you ever pay him 10 percent of the profit?

A. Mr. Taylor arranged it, and so far as I know, he received it every year.

(Testimony of Hans Forster.)

Q. Did you figure out any of the profits during that period of time?

A. No, Mr. Taylor figured out the profits for Mr. Egeness.

Q. And you have no explanation for these two checks signed by Mr. Utgard?

A. All I know is that this looks like it was the final payment to Mrs. Finstad.

Q. I am curious about the two checks on that date. A. I don't know.

Q. You don't know? [2705]

Mr. Keesling: Is that a 1950 date?

Mr. Moriarty: February 28, 1950.

Mr. Keesling: 1950?

Mr. Moriarty: Yes.

Q. (By Mr. Moriarty): During all of these years, you figured Mr. Egeness's salary was \$300?

A. \$300 a month and 10 percent of the profit, yes.

Q. And you never looked at the books?

A. No.

Q. How much did you pay Cook and Grant at the time that you initiated the Finstad and Utgard transaction?

A. I think the total amount that I paid Grant and Cook and Egeness——

Q. (Interposing) I mean the original.

A. (Continuing) ——was forty thousand dollars plus taking over the contract to Mrs. Finstad.

I don't know what the balance was, but that was

(Testimony of Hans Forster.)

the amount that those three fellows got for their interest.

Q. And you drew a check on the Alpine Dairy?

A. Wherever Taylor told me to draw it on, that is where I drew it on, if it was Issaquah Creamery or [2706] Alpine Dairy, or if I paid out of my savings account, I couldn't tell you.

Q. When Mr. Erickson wasn't there when the check came in, did you have any conversation with Mr. Erickson as to how that forty thousand dollars was to be charged? A. With who?

Q. With Mr. Erickson.

A. I didn't—I didn't talk—say anything to Mr. Erickson, how we should charge it, or what. I don't even know if he made out the check. I haven't got the slightest idea how he is supposed to charge it.

Q. The point I am getting at is——

A. (Interposing) Yes?

Q. (Continuing) ——that you were at Conway when this transaction was completed?

A. I take it if it was at Conway, we went up there, Mr. Grant and Mr. Taylor and myself. I don't know if Mr. Cook was along. Mr. Taylor went over the books, and I am sure it wasn't finished up up there. I think it was finished up down here.

Q. In Seattle?

A. I think in Mr. Croson's office.

Q. Mr. Erickson wasn't present? [2707]

A. No, Mr. Taylor was.

Q. Mr. Taylor was? A. Yes.

(Testimony of Hans Forster.)

Q. But the check that was paid would come to Issaquah, wouldn't it?

A. Well, you will have to repeat that. I didn't get it.

Q. The check that you paid to Cook and Grant would come to Issaquah?

A. You mean the cancelled check?

Q. Yes.

A. Well, yes, it would go to the bank and I suppose they send them up.

Q. And Mr. Erickson would check the cancelled checks; Mr. Taylor didn't do that?

A. I don't think anybody did the way it sounds to me the last couple of years.

Q. Well, what was he supposed to do?

A. Well, between Mr. Taylor and Mr. Erickson they are supposed to take care of my bookkeeping department.

Q. Well, was Mr. Erickson supposed to take the cancelled checks and check them off the register?

A. I never gave Mr. Erickson any instructions on what he should do in the bookkeeping, or what he [2708] should do about it. He had moved directly under Mr. Taylor, and Mr. Taylor told Mr. Erickson to handle the checks. You will have to ask Mr. Taylor. I couldn't tell you.

Q. You mean to say you didn't know that the cancelled checks of the Alpine Dairy and Issaquah Creamery Company—at any time during the time that you were running this business, that you did

(Testimony of Hans Forster.)

not know those checks came to Issaquah and were handled by Mr.——

A. (Interposing) I know they came to Issaquah, because I have picked a lot of them up, the package at the Peoples Bank once a month.

Q. Who did you deliver them to?

A. I delivered them to Mr. Erickson.

Q. Now, some of these checks were on this pocket checkbook that you carried around with the Alpine Dairy stamp on it?

A. That is right.

Q. Now, he wouldn't know what those were for?

A. Who wouldn't?

Q. Mr. Erickson.

A. Well, I wrote on every stub what it was for, and who it was made out to. [2709]

Q. Where are those stubs?

A. I gave him all the stubs, every one of them. If I had some of the book at the end of the month, I tore part of them out, and if I finished a checkbook up during the middle of the month, I had him give me another book and he put the Alpine Dairy stamp on it.

Q. Wouldn't he have to ask you still some questions on what they were for, whether they were business expenses, plant expenses, truck expenses or supplies?

A. I marked it on it what it was.

Q. Have you any of those?

A. If he should have asked, he certainly could have.

(Testimony of Hans Forster.)

Q. Have you any of those stubs for the Providence Hospital, the check that is in evidence?

Mr. Griffin: Any stub for what? I didn't get that.

Mr. Moriarty: For the Providence Hospital check that is in evidence.

A. I haven't got any stubs.

Q. (By Mr. Moriarty): In other words, when you got rid of that stub and completed taking out the checks, you handed it [2710] all to Mr. Erickson, and expected Mr. Erickson to do his duty and make the entries?

A. That is right; after I gave it to him, that is all I had to do with it.

Q. But when he came in and told you he didn't know where to enter certain payments to the Issaquah Creamery and Alpine Dairy, he put them on your desk, or—and you deposited them in 198?

A. That is right, yes.

Q. You have no recollection of Mr. Utgard writing those checks out on February 28, 1950, although they were in payment for your stock?

A. I don't even know if I gave him the order. You might ask Mr. Taylor. I think Mr. Taylor made out those checks. It looks to me like it is his signature.

Q. His signature? This is Mr. Utgard's signature. A. I mean——

Q. (Interposing) Aren't those checks on——

Mr. Griffin: (Interposing) Let him complete his

(Testimony of Hans Forster.)

answer. He started to say "signature," and he meant——

Mr. Moriarty: Well—— [2711]

Q. (By Mr. Moriarty): Is the payee in the name, written "Mary Finstad" written by Mr. Taylor?

A. I am just about positive, yes.

Q. Then you must have been present when they were written?

Mr. Griffin: Objected to as argumentative.

Q. (By Mr. Moriarty continuing): Well, were you present?

A. I couldn't tell you. I would say I went up there with Mr. Taylor so I would say nine times out of ten, maybe not quite that close, but just about every time, we tried to fit our time so that we went up there together, so that I probably was there.

Q. Mr. Taylor wouldn't have written those two checks on that day without talking to you, would he?

A. I am quite sure he wouldn't, no.

If I was up there or not, I can't tell you.

Q. Even if you weren't up there, he would have talked to you about it?

A. Before?

Q. Yes.

A. That is right.

Q. Does that refresh your recollection [2712] anyway?

A. No, I can't tell you if I was up there that day or wasn't there. It is impossible.

Q. That is your answer?

A. Yes.

Mr. Moriarty: May I have Exhibits 221 and 222?

(Testimony of Hans Forster.)

(Whereupon, Exhibits were handed to Mr. Moriarty by the Court.)

Q. (By Mr. Moriarty): Mr. Forster, that Finstad and Utgard deal was one of the deals that Mr. Taylor questioned the advisability of, as I recollect your testimony in direct?

A. Yes; oh, I don't think he questioned it so much except that he felt, before he went up there, before he looked over the books, that he couldn't see how it would try to fit too well into the rest of the plants but after I explained it to him, what I was trying to do with taking this independent producer, that didn't belong to Cooperatives, and I felt that a lot of my producers in King County and Snohomish County, being signed up by the Farmers' Cooperatives that I would probably benefit by going into Skagit County, especially since my competitors [2713] went into Whatcom and down to Lewis County. I tried to expand my supply of production from Producers.

Q. And did you discuss with Mr. Taylor at that time when you were explaining to him how it would work out, how the payments to Mrs. Finstad were going to be made?

A. We never discussed the payments, how the contract was going to get paid. if I was going to get a salary. or what the deal was.

We handled it with Mrs. Finstad and Mr. Egeness, and how it was done, I——

Q. (Interposing) You knew that Mrs. Finstad had to get paid, didn't you?

(Testimony of Hans Forster.)

A. That is right, yes.

Q. You were taking over a contract?

A. That is right.

Q. And one of the discussions with Mr. Taylor, I presume, was about the payments that had to be made in the future?

A. Well, Mr. Taylor—I don't even know what the balance was, the actual balance was, that Cook and Grant and Egeness owed Mrs. Finstad.

Q. Did you go into this deal not knowing what was owing Mrs. Finstad? [2714]

A. I couldn't tell you today. I think it was around twenty thousand dollars; but if it was twenty-one or nineteen, I couldn't tell you. Mr. Taylor kept track of the balance, and how the payments should be made.

Q. And you discussed that with Mr. Taylor. You convinced him it was a good deal. I mean, the whole matter was discussed, wasn't it?

A. Well, we discussed the purchase price, the amount that I was going to pay those three partners.

Q. Not the monthly payments?

A. Well, it wasn't monthly payments. I think half of it, or one-third of it, I think thirteen thousand dollars was paid when we went in there, and I think another thirteen thousand three hundred thirty-three dollars was paid six months later. I don't just exactly know, and then another the year afterwards. You must have the contract here some place.

(Testimony of Hans Forster.)

Q. I have the checks also. A. All right.

Q. Aren't those the checks, Mr. Forster? And they are paid October 30, 1943, December 31, 1943, June 30, 1943? [2715]

A. Well, you didn't ask me about those. You asked me about the payments I paid to the partners on forty thousand dollars.

Q. No, I was going to get what your conversation with Mr. Taylor was at the time Mr. Taylor told you it was a poor deal and you convinced him it was a good deal, and there was a discussion there, and I thought at the time that there was also a discussion with Mr. Egeness about his salary, but you apparently say Mr. Taylor wasn't there at the time you discussed his salary.

A. When Mr. Grant first approached me of trying to be interested in Finstad and Utgard, I listened to him, and I said, "Well, I like to go ahead and see if we can work out a deal."

At that time, the Grade A milk of Finstad and Utgard was coming to Kristoferson, and I knew that Kristoferson was interested in it, but I said, "You will have to go up and see Hicks Taylor, and if you can sell him a bill of goods, I am sure we can work out something."

And he went up to see Hicks Taylor, and he came back, and he said, "Well, that guy is not too much interested in it. I guess I probably try to make a deal with Kristoferson." [2716]

And I said, "What seems to be the trouble?"

And he says, "He didn't figure it would benefit

(Testimony of Hans Forster.)

too much, about going up to Skagit County and take over this operation."

And I said, "Well, I will talk to Hicks Taylor about it, and I will give you a ring."

And that is when Taylor and I had the discussion.

Q. What was that?

A. The discussion was before Hicks Taylor ever was up at Conway.

Q. And did you discuss the payments?

A. It didn't have nothing to do with the payments. The original—if it was a good idea in going in there didn't have nothing to do with any kind of arrangement of how to buy it, or when to buy it.

It was the idea of going into Skagit County and buying Finstad and Utgard. That is the decision we had to make. There was no use for him to go over the books if he didn't see eye to eye on the deal, and doesn't figure we should do it.

Q. You don't claim that Mr. Taylor also advised you on your sales procedures and your dealings with the Cooperatives, do you? [2717]

A. With the who?

Q. On your dealings with the Cooperatives and the development of your outlets?

A. Well, he definitely helped me so far as dealing with the customers is concerned. Hicks Taylor took my place, and went in to meetings with the Cooperatives and in to meetings with the Dealers. He advised me what to buy and not buy, and if I wasn't a good enough salesman to sell him, we should go into it, we didn't.

(Testimony of Hans Forster.)

There are other things I thought was a good thing and he convinced me it wasn't, and we dropped it.

Q. And in the Finstad and Utgard deal, you convinced him it was a good idea?

A. That is right.

Q. Without reference at all to what had to be paid to widow Finstad and to Grant and——

A. (Interposing) Oh, yes. It was discussed, the total amount had to be paid. The whole deal amounted to around sixty thousand dollars.

Q. What instructions did you give Mr. Taylor as to how Mrs. Finstad was to be paid?

A. I didn't give Taylor any instructions how she was to be paid. After we agreed that at least we [2718] should take a look at it, we went up there with Cook and Grant and Hicks Taylor.

Q. And Egeness?

A. Egeness was at the plant already. He has been up there for the last twenty years.

Hicks Taylor went in the office, and we met Mr. Utgard, and Hicks Taylor went over the books while I went through the plant and looked at the equipment with Mr. Egeness, and after three or four hours—I don't know how long it took—Hicks Taylor told me, and he told Egeness, that the books looked all right, and if he could make a deal, that he couldn't see why something couldn't be worked out, and from there on, we went and the actual deal was made in Mr. Croson's office.

Q. And you never bothered in the four or five years to find out how the widow was being paid?

(Testimony of Hans Forster.)

A. No, I never bothered or asked anybody.

Mr. Moriarty: We will pass to another matter at this time, if the Court please.

The Court: All right. Ladies and Gentlemen of the Jury:

We will now take the mid-morning recess, and the Court calls your attention to the admonition given on similar occasions, and asks that you heed it [2719] on this occasion.

You may now be excused.

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, at 11:00 o'clock a.m. a recess was had in the within-entitled and numbered cause until 11:15 o'clock a.m. March 31, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all defendants are present in the courtroom?

Mr. Moriarty: Yes, your Honor.

Mr. Griffin: Yes, your Honor.

The Court: You may proceed, Mr. Moriarty.

Q. (By Mr. Moriarty): Mr. Forster, what year did you become interested in Simonson and Forster, Incorporated, doing business as the Puyallup Creamery Company?

(Testimony of Hans Forster.)

A. I can't give you the exact date. I think it was in the middle thirties.

Q. In the middle thirties; and, as I [2720] recollect your testimony, Mr. Simonson was buying down in that area and you were looking for an outlet for your fresh milk from the Alpine Dairy?

A. No.

Q. Well, what was it?

A. Mr. Simonson was manager of the Red Rock Creamery at Kent, working at that time for it and then later on Kraft Cheese bought it out, and we was buying milk in upper Kent territory, and there was competitors in the field of buying this milk at that time.

That is when I got acquainted with Mr. Simonson and he told me that the Puyallup Creamery was for sale and that he never been in business for himself, and wondered if I was interested in going in with him, and I told him that if it didn't take too much money, I would be interested in it.

Q. What year was that?

A. I say sometime in the middle thirties, I guess.

Q. 1935?

A. I would say yes. I can't tell you the exact year.

Q. And what did you and he do?

A. Well, we looked it over, and I guess we [2721] bought it.

Q. You put up \$1,250?

A. I think \$1,250 apiece.

Q. And bought Puyallup Creamery for \$2500?

(Testimony of Hans Forster.)

A. Well, that was the down payment.

Q. That was the down payment; well, how were the other payments arranged?

A. I haven't got the slightest idea.

Q. How much did you pay for it?

A. I don't know. That is twenty years, and I couldn't tell you how much we paid.

Q. As a result of that, you got an outlet for your fresh milk in Tacoma?

A. Well, at that time, he wasn't in Tacoma, just in the Puyallup Valley, and then he went later on into fresh milk, but from what I remember, I don't think there was any fresh milk distribution to start out with. I think we got into fresh milk ourselves.

Q. Under Puyallup Creamery?

A. Under Puyallup Creamery and Simonson and Forster.

Q. In other words, you supplied to Simonson and Forster, Incorporated, the milk which later developed out of the Valley?

A. Oh, no. [2722]

Q. Into Tacoma?

A. He was buying his milk direct; I think the only milk that we supplied at Puyallup was when the paper started to come out, and him not having enough bottles, he had only three or four routes, so that he could be competitive with Meadowsweet and Arden's. We sold him some paper milk, but that was either late '30s or early '40s.

Q. Let's come back to the original agreement. What did you agree with Mr. Simonson was to be his salary?

(Testimony of Hans Forster.)

A. Well, of course, that was changed a few times in 20 years.

Q. I am interested in the original agreement.

A. I can't tell you what the original agreement was. I think at that time, I was working for \$150 a month, and he, too.

I don't know what the original set-up was.

Q. When did your salary become \$400?

A. Well, that was in the late 1940's.

Q. In the late '40s? A. Yes.

Q. Now, would you say late 1945 or '6?

A. Probably. You expect me to go back ten [2723] years and——

Q. (Interposing) At that time, you weren't receiving anything from Simonson and Forster in money? A. That is right.

Q. And you were making your profits by supplying Simonson and Forster with supplies?

A. Well, you didn't know Oscar Simonson, did you?

Q. No, I didn't.

A. Well, there wasn't very much profit in it after I got selling it, I promise you.

Q. All right; you were supplying him and satisfied with the arrangement?

A. Well, we both were satisfied. We were very good partners and friends.

Q. But he was a hard man to deal with, from what you inferred?

A. Well, he wanted to get it just as cheap as he possibly could.

(Testimony of Hans Forster.)

Q. And you wanted to get as much as you could?

A. Well, I guess that is business.

Q. Now, at one time you—as I take it, Simonson and Forster never declared a dividend?

A. I don't think they did.

Q. I understand none of your companies ever [2724] paid a dividend?

A. I don't think they have.

Q. Now, sometime in 1940, Mr. Taylor, according to your testimony, came to you and reported to you that Mr. Simonson was taking \$500 instead of \$400?

A. Well, either \$500 or \$600 or \$400 to \$500, I can't tell you exactly.

Q. Well, it was \$100 more than the agreement between you?

A. He said he increased his salary \$100.

Q. And, as a result of that report to you, you went down to see Oscar?

A. I don't know if I went down there or I called him on the 'phone, or the next time we talked, I mentioned it to him.

Q. What did you say to Oscar, and what did he say to you? A. Well——

Q. (Interposing) This was after Taylor had reported it.

A. He said he figured he needed \$500 a month to go on, and I said, "Well——"

Q. (Interposing) What did you say?

A. I said, "Well, if you feel you ought to [2725]"

(Testimony of Hans Forster.)

increase your salary, then you better try to send me a check for \$100 a month."

Q. You made that yourself, that arrangement with Mr. Simonson? A. That is right.

Q. Mr. Taylor didn't make that arrangement?

A. Except he knew all about it. He is the one that told me in the first place.

Q. We know he knew all about it. I am asking about the conversation.

A. That conversation with Oscar, I don't know if Taylor was there when we talked about it when we had lunch.

Q. Well, now, I understood your direct testimony to be that Mr. Taylor reported to you that Mr. Simonson, or Oscar, was taking \$100 of salary, and that was the occasion of a conversation between you and Mr. Simonson, and he said that he wanted—he couldn't get along on \$400, but wanted \$500, and what did you say to Oscar about the five hundred?

A. I say, "Very well, you have got to have \$500. You had better send me \$100 a month until you decide you want to go back to \$400, and you can cut it out."

Q. What did Oscar say? [2726]

A. I got the \$100 a month, so I guess he decided he didn't want to drop back down to \$400.

Q. Was that your salary?

A. That is what I figure it was, yes.

Q. That is what you figure it was, and was that mailed to you at Issaquah? A. Yes.

(Testimony of Hans Forster.)

Mr. Moriarty: May I have Exhibit 221 and Exhibit 222?

(Whereupon, exhibits were handed to Mr. Moriarty by the Clerk.)

Q. (By Mr. Moriarty): Handing you what is marked as Government's Exhibit 221, with the original—first, in point of time—entry, January 4, 1946. I will ask you if this series of checks for \$100 are the checks that you received at Issaquah from Oscar?

A. I guess those are the checks, yes.

Q. And handing you what is marked as Exhibit 222, which is a series from August 10, 1948 to December 29, 1949, and is captioned Exhibit 222, I will ask you if those are other checks that you received during this period from Oscar? A. Yes.

Q. On Exhibit 222, will you examine the check dated October 12, 1948, for \$100? [2727]

A. October which?

Q. October 12, 1948. A. Yes.

Q. And examine the endorsement on the back of it? A. Yes.

Q. That has your personal endorsement?

A. That is right.

Q. And that was cashed by you?

A. I would think so. Is there anything wrong about it?

It was made out to me and I cashed it.

Q. The point I am making is that the others bear the rubber stamp except these that I am going to refer to.

(Testimony of Hans Forster.)

On 2—on 11-15-49 of Exhibit 222, I will ask you to examine that check for \$100. A. 11—

Q. —15-49. A. I don't know.

Q. Have you found it? What exhibit are you examining? A. 222.

Q. 222, 11-15-49.

A. There is November 26, 1949.

Q. Well, examine the back of that and see if [2728] it is personally endorsed? A. No.

Q. All right, examine the other checks, the one that has your personal endorsement.

Excuse me, that check is January 15, 1949; not 11-15. A. Yes.

Q. That is cashed by you personally?

A. It is my signature on it, yes.

Q. And that didn't find its way into 198?

A. I wouldn't know. I probably needed some cash, so I cashed it.

Q. Will you examine the check on Exhibit 221 for \$200 dated March 20, 1948?

A. That is right.

Q. Does that bear your personal endorsement?

A. Yes.

Q. And that was cashed by you?

A. Well, I endorsed it. I must have got the money.

Q. All the other checks bear the rubber stamp?

A. Yes.

Q. You knew salary was subject to withholding, didn't you? A. That is right. [2729]

(Testimony of Hans Forster.)

Q. Your own check from the Issaquah Creamery Company had withholding tax on it?

A. That is right.

Q. A deduction? A. That is right.

Q. Did it occur to you in your conversation with Oscar when you were getting this \$100 salary that there should be some withholding deducted?

A. I don't know if they made withholding deductions for him or what the year was. I just told him if he increased his salary \$100 a month, he had better send me a check for \$100.

Q. When did you report the conclusion of the negotiations with Oscar to Mr. Taylor?

A. I am sure I told him about it the next time I seen him.

Q. And how was he expected to know that you were getting it every month?

A. Well, he is the fellow that handled the books down there. He knew what the deal was.

Q. So, you expected Oscar, or Mr. Taylor, to check Oscar and report to you, and also make the withholding deductions on your check, these checks that are in evidence?

A. I don't know if it was a salary or how they worked it. I knew Taylor knew about it. He is [2730] the one that called my attention to Oscar's salary there when the deal was made.

Q. Didn't you personally make these arrangements? A. Which arrangements?

Q. With Oscar?

A. I told him about it.

(Testimony of Hans Forster.)

Q. Didn't you make the arrangements with Oscar?

A. I can't even tell you if Hicks Taylor was there or wasn't there. You asked me something that happened ten years ago.

Q. I want to be fair with you.

A. All right.

Q. Your direct testimony was that you personally went down and saw Oscar as soon as Taylor reported to you that he was drawing \$100 extra, on your examination a few moments——

Mr. Griffin: (Interposing) I am sure that statement wasn't made, either.

Mr. Moriarty: I can't challenge the record.

Q. (By Mr. Moriarty continuing): Will you tell us what was said when Taylor reported to you that Oscar was getting \$100 extra? [2731]

A. I told you after Taylor reported that to me, either the next time I seen Oscar or the next time I had a chance to talk to him, I mentioned it to him—the conversation—that if he felt he had to increase his salary \$100 a month, he had better send me \$100 a month.

If he felt the business could stand it, it was good enough for me, or if he felt he should cut to \$400.

Q. Wasn't the effect that if he was getting \$500 salary, you were to get \$100 salary?

A. That is right.

Q. So that you knew that it was salary you were getting \$100 in place of the \$500 that Oscar was taking?

(Testimony of Hans Forster.)

A. I don't know how they handled it on the books, Mr. Moriarty.

Q. You didn't ask him?

A. No, I didn't, Mr. Moriarty.

Q. But you received these checks in the mail at Issaquah?

A. Just about always. I am sure about it. Either that, or if I happened to be down there, he would probably hand me one.

Mr. Moriarty: Will you give me Exhibit 233?

(Whereupon, Exhibit was handed to Mr. Moriarty by the Clerk.)

Q. (By Mr. Moriarty): You have found out that none of these were reported to the Government on your income tax, haven't you?

A. Well, there has been so much controversy on those working papers and income tax reports the last two months, I don't know what was reported and what wasn't reported.

Q. I see; so far as you know, you didn't report it?

A. So far as I know, Taylor reported it. Taylor knew I had it.

Q. And his information would come from the books of Simonson and Forster?

A. Well, he knew all the time that I was getting the \$100 a month. He knew when we discontinued it.

Mr. Moriarty: May I have Exhibit 233?

The Clerk: You have it.

Q. (By Mr. Moriarty): Did it occur to you at any time during the times that you were receiving

(Testimony of Hans Forster.)

money from Simonson and Forster, and when you were making your income tax [2733] returns under Salary to report Simonson and Forster?

A. I still don't know if Taylor reported it or not.

I never looked at the returns.

Q. Was there any reason for not looking at the returns?

A. Well, so far as I knew, there was no reason to look at it.

I figured Taylor knew more about my business than I did, and he was the one that made it out, and I trusted him, the last 25 years, and there was no reason for me to go into it.

Q. Can you explain to us now the casein transaction which I understand was a by-product of some of the milk operations at Issaquah and went off of inventory because they became moldy?

A. That is right.

Q. And that was the property of Issaquah Creamery Company, wasn't it?

A. It was the property of Issaquah Creamery Company, that is right.

Q. Now, as I understand it, you were able to sell it to the Borden Company? A. That is right.

Q. And received for your casein a check in the [2734] sum of \$10,724.00 as shown on Exhibit 233?

A. That is right; \$10,742.40.

Q. And there also was another check for \$8,-203.30?

(Testimony of Hans Forster.)

A. That is right. One of them was in July, 1944, and the other one was September 6, 1944.

Q. That all happened in that year, and those were deposited in your personal savings account?

A. That is right.

This came from—it was casein that was produced in 1943.

Q. Yes, but——

A. (Interposing) Spring.

Q. (Continuing) But it was off the inventory in nineteen what?

A. Well, I wouldn't know when it was taken out, but it was taken out when we couldn't sell it, because the stuff was no good, and we tried to sell it to Adhesive Products and at that time, we sent Borden's some samples, and they were not interested in it.

Q. It finally culminated in your getting checks for approximately nineteen thousand dollars?

A. That is right. [2735]

Q. In the short space of a few months?

A. Well, this was casein that was produced the year previous.

Q. Well, now, that is the fact, isn't it, that you received those checks?

A. That is right, sure.

Q. And they were payable to the Issaquah Creamery Company? A. That is right.

Q. And Issaquah Creamery Company, a corporation of which you were the sole owner, had the title to the casein?

(Testimony of Hans Forster.)

A. Well, I don't know if there was any title to it, or not.

I told you that it was made in the spring of 1943 and the stuff got moldy on us, and we couldn't sell it, and we took it off inventory.

It must have been taken off inventory in the fall of 1943 and then the market changed.

Q. Did you get a deduction for taking it off of the inventory?

A. Deduction from whom?

Q. From your income tax?

A. I wouldn't know how it was handled on the income tax. [2736]

Q. You didn't know anything about it at the time? A. No, sir.

Q. All right; tell us at the time this first check arrived the conversation that you had with Mr. Erickson about what to do with it?

It was payable to the Issaquah Creamery Company.

A. Well, he said he didn't have it on the inventory and he didn't have any place to credit to, and——

Q. (Interposing) Couldn't he credit it to inventory?

A. That is a conversation that we had. I don't know if he could credit it to inventory or not. I haven't got the slightest idea.

Q. It had been on inventory and taken off. Why couldn't it have been credited to inventory?

A. It was on inventory the year before.

(Testimony of Hans Forster.)

Q. Couldn't it come back on the inventory?

A. Well, you have to ask somebody that knows something about bookkeeping. I don't know what can come back in and go out.

Q. We will get into the bookkeeping.

What did you then say to him if he didn't [2737] have a place on the books?

A. I can't recall the conversation that happened in 1943 or 1944.

Q. Well, you do recall that a substantial sum of money came from stuff that was off the inventory, or does \$19,000 mean anything to you?

A. Go ahead.

Q. What?

A. I tried to answer, and you kept on talking, so if you can ask the question again, I will be glad to give it to you.

Q. When the first check came to you, Erickson came in and told you he didn't have any place to put it on the books. What did you say to **him**?

A. Well, I asked him what the deal was, and he said it was taken out of inventory, and he didn't have any place to put it on the books.

Q. And is your answer the same in regard to the other check?

A. So far as I knew, yes. This is ten years ago that you are trying to——

Q. (Interposing) Well, now, when Mr. Erickson, on these many occasions that he told you that there wasn't a place on the books to put it, didn't it occur [2738] to you that there should be some

(Testimony of Hans Forster.)

place on the books to put any item that belongs to the Issaquah Creamery Company in the bank account of the Issaquah Creamery Company?

A. Well, I think there have been few occasions during this happening that I have talked to Hicks Taylor about it.

Q. Just a moment. I don't think that is an answer to my question.

A. All right.

Mr. Moriarty: Will you read the question?

The Court: Mr. Reporter, read the question.

(Whereupon, the following question was read by the reporter:

"Q. Well, now, when Mr. Erickson,—on these many occasions that he told you that there wasn't a place in the books to put it, didn't it occur to you that there should be some place on the books to put any item that belongs to the Issaquah Creamery Company, in the bank account of the Issaquah Creamery Company?")

A. Well, he didn't talk to me every time those things came up. I probably asked him on a few [2739] different occasions, but the rest of them, I didn't figure there was anything wrong about it and I guess he didn't either, and he put the checks either on my desk or put them in my desk drawer, and we didn't have a conversation every time those things occurred.

Q. (By Mr. Moriarty): Well, this check for \$8,203.30 commanded your personal endorsement of the Issaquah Creamery Company in your own hand-

(Testimony of Hans Forster.)

writing, I take it, and the name **Hans Forster** is on it? A. That is right.

Q. So it secured more than passing attention?

A. Well, I think we probably talked about it when the first check came in. Conversation—this was the second check, was the balance of what we had left in the barn and finally was able to sell it.

Q. Your endorsement is on the second check?

A. That is what I say. We probably talked the first time, and the second time he gave me the check and I probably endorsed it.

Q. That was clear profit of about twenty thousand dollars for you?

A. I don't know if it was a clear profit or [2740] not.

Q. It was off the inventory.

A. Well, then, it must have come back in. I don't know if Taylor reported it or not.

Q. Well, it didn't come in to the Issaquah Creamery Company.

A. Then he probably reported it on my own.

Q. You probably reported it on your own?

A. I didn't; Mr. Taylor did. I never made out my reports.

Q. (By Mr. Moriarty): Will you give me Exhibit No. 245?

(Whereupon, Exhibit was handed to Mr. Moriarty by the Clerk.)

Q. (By Mr. Moriarty): This wasn't the first batch of casein that you had made?

A. No, I think it was the last one.

(Testimony of Hans Forster.)

Q. You had bought and sold casein through the years?

A. We never bought any. We always—we didn't have any use for it.

We just sold casein.

Q. Now, coming to the time that you had some dealings with the Time Oil Company, Mr. Green of the [2741] Time Oil Company has testified about the arrangement and he solicited the business from you?

A. That is right, to buy gasoline, oil, and tires.

Q. That was for Finstad and Utgard?

A. No, the Time Oil was not going up to Finstad and Utgard.

Q. Well, was it going to Puyallup Creamery?

A. No.

Q. Was it going to Renton Ice and Ice Cream Company?

A. No, none of those. I wasn't manager of Renton Ice and Ice Cream. Schneider made his own arrangements in buying.

Q. I mean about the gas and oil.

A. I don't even know if Schneider bought from Time Oil. I didn't tell the Manager what to do in those things.

Q. Well, they came to see you about getting your oil account? A. Came to see me.

Q. And that was for all companies?

A. Oh, no.

Q. Well, that was the Signal Service when Mr. Green came to you, the Signal Oil Company?

(Testimony of Hans Forster.)

A. Signal as serving Issaquah and Alpine and Apex Farms.

Q. Did you own all of Apex Farms at that time?

A. No, Mr. Chapman made his own arrangements.

Q. Now, what did Mr. Green promise you?

A. He promised me one and one-half cent rebate on the gasoline. I don't know if he gave me a special price on his oil or not, but I think we was getting one cent discount off the tank wagon price from Signal Oil, and he said he could make one and one-half cents.

Q. If you bought all the oil?

A. No, if we bought all the gas.

Q. Bought all the gas from the Time Oil Company?

A. As far as Alpine was concerned.

Q. And you entered into that arrangement?

A. That is right.

Q. And that is as far as Issaquah is concerned, also?

A. I don't think Issaquah started out at the same time as Alpine did. I can't——

Q. (Interposing) They finally got into the [2743] picture? A. That is right.

Q. Did the Renton Ice and Ice Cream Company finally get into the picture?

A. I just got through telling you I never made any of the arrangements for any of the buying. I might advise.

Q. You heard the testimony that certain cash

(Testimony of Hans Forster.)

payments were made at Alpine Dairy, by Mrs. Wilcox and Mr. Bezeau.

A. By them, or to them?

Q. To them by Mr. Green.

A. That is right.

Q. What instructions did you give to Mrs. Wilcox about the Time Oil Company cash that was paid?

A. I didn't give her any instructions. Mr. Green, when some of the payments was made to her, he gave her the instructions to give me the money.

Q. And what instructions did he give to Mr. Bezeau? (Bezu)

A. You mean Bezeau? (Bezo)

Q. Bezeau. (Bezo)

A. I didn't give him any instructions. He gave me the money. [2744]

Mr. Green, the only time he gave it to Mrs. Wilcox or Ribary or Bezeau, was when I wasn't there.

Q. You generally received it personally?

A. Well, quite a few times, yes.

Q. You picked it up, or was it delivered to you?

A. He brought it down to the Dairy.

Q. He brought it down to the Dairy?

A. Yes.

Mr. Moriarty: Will you give me Exhibits 171, '2, '3 and '4?

(Whereupon, exhibits were handed to Mr. Moriarty by the Clerk.)

Q. (By Mr. Moriarty): Mr. Forster, I hold in my hand a series of exhibits of substantial amounts,

(Testimony of Hans Forster.)

of 170, 270 and 375 dollars and \$214, and \$412, and varying sums from \$100 upward, and ask you if you recognize those as the Time Oil Company's cash rebates that were paid to you by the Time Oil Company?

A. Well, I would think they are. Some of those receipts are signed by me, and some of them by Mr. Bezeau.

Q. You heard Mr. Bezeau's testimony, didn't [2745] you?

A. That is right. Some of them by Mrs. Wilcox.

Q. Yes; did they ever ask you why Mr. Green was telling them to send that cash up to you personally?

A. Did they ever ask me why?

Q. Yes.

A. No, I don't know why they should.

Q. Well, they were receiving it from Mr. Green?

A. For me, yes.

Q. For you? A. Yes.

Q. Now, you received that in cash?

A. That is right.

Q. And for what reason was that?

Because you requested it to be paid in cash?

A. No, I didn't request it. That was the only way I could get one and one-half cents. It was at Mr. Green's request, definite request. That is the only way he could give me one and one-half cents by making it a cash discount. It wasn't requested by me. [2746]

(Testimony of Hans Forster.)

Q. Was the Signal deal a deal whereby you received cash also?

A. No. That was only one cent. That is the agreement. That is the conversation we had. That is what he told me about it, and I even called him afterwards and wanted to refresh his memory on the deal, and he said that is the reason it had to be on a cash basis—there was an agreement between the oil companies not to go over one cent discount from the tank wagon price.

He said he could make it one and one-half cent, if I could take it in cash and I couldn't see any reason why I couldn't take it in cash.

Q. Did Mr. Green tell you you could take it in check on discount off the sale, or by cash?

A. The only arrangements——

Q. (Interposing) I am asking you that specific question.

A. I will give you the specific answer. He told me it had to be in cash in order to get the one and one-half cents.

Q. Now, when this was under investigation, Mr. Forster, didn't you call Mr. Green and ask him to state to the agents that he insisted that it be paid in cash? [2747]

A. I called Mr. Green and told him "You had better tell them the actual facts how it happened, the truth about it."

Mr. Moriarty: Read the question to him.

The Witness: That is what I told him.

(Testimony of Hans Forster.)

The Court: Mr. Reporter, will you read the question?

Mr. Moriarty: And answer "yes" or "no."

The Witness: You don't want me to give you the answer what I talked to Mr. Green about?

Mr. Moriarty: I am asking you now a specific question.

The Witness: All right.

Mr. Moriarty: That I want you to answer "yes" or "no".

Mr. Griffin: It is an impeaching question.

Mr. Moriarty: I will lay the foundation later, if necessary. I don't know whether it will be necessary.

The Court: Mr. Reporter, read the question.

(Whereupon, the following question was read by the Reporter:

Q. Now, when this was under investigation, Mr. Forster, didn't you call Mr. Green [2748] and ask him to state to the agents that he insisted that it be paid in cash?")

Q. (By Mr. Moriarty): "Yes" or "no"?

A. That wasn't the conversation, no.

Q. No? All right. Did you call Mr. Green during this investigation and have a conversation with him? A. Yes, I did.

Q. And what was your conversation with him?

A. I told him, "You had better tell them the truth." So far as I was concerned, our conversation was that it had to be in cash in order to go ahead and get the one and one-half cents.

(Testimony of Hans Forster.)

Q. And what did Mr. Green say to you?

A. He said he didn't remember. In the first place, he asked me—he said, "They want to get the slips." And he said, "Shall I give them to him?" And I said, "Of course."

He said, "Well, I don't know just how far back I got the slips left."

And I said to give them all the information they want. And I don't know why I called Mr. Green on the question that you asked me, but I was quite sure that either Mr. Marx or Mr. Eppler told me at that time that Mr. Green said—told them I could [2749] take—to either take it in cash, or could take it in check, or could take it on the rebate off the statement, which was a deliberate lie.

That is when I called him up and told him he had better start to remember the conversation we had and the reason why he wanted me to take it in cash.

Q. You had a conversation with him, then?

A. Sure, I had a conversation with him.

Q. And you called him?

A. Yes, I think I called him.

Q. Now, will you tell us why these cash payments were not deposited to the Alpine account?

A. It never occurred to me to deposit them in the Alpine account. I told Taylor about the first arrangement we had, and he knew where the money went, and he knew where the amount of money I had at all times in my savings account up at Issaquah, and if it went up or down, he definitely knew where the money went that came out of there. So

(Testimony of Hans Forster.)

far as I knew, this was reported. If he didn't get the amount from Green, he certainly got it out of my savings.

Q. Did you have a mark for cash from Time Oil in your savings? [2750]

A. I didn't have to. The only receipts I put in there besides my own checks that I received from the Creamery that I didn't use in my own personal account——

Q. Did you in any deposit statement that you made to the Washington State Bank in Account 198 ever designate any cash or any of those deposit slips as coming from Time Oil Company?

A. No, I don't know why I should have.

It was cash that went in there.

Q. You designated it as cash; is that correct?

A. Well, you have to show me a slip. I think it says "cash" on it.

Q. You tell me how on January 28, 1947, Mr. Forster could tell from that receipt that you gave to the Time Oil Company how much was due except you reported that individual item to him?

Mr. Cox: You mean Mr. Taylor?

Q. (By Mr. Moriarty continuing): Mr. Taylor?

A. Well, he could tell from my savings account what I had in there. That is all I can tell you.

Q. Was he in charge of your savings account?

A. No, the bank was.

Q. Well, how would he tell that was Time Oil Company?

(Testimony of Hans Forster.)

A. He knew what I had in the savings account.

Q. How could he tell that was Time Oil?

A. It didn't make any difference where it came from. It was income.

Q. Wouldn't that be known only to you?

A. Which?

Q. That amount of money that you receipted for cash?

A. Probably the exact amount would be only known to me or to Mr. Green.

Q. Well, how many conversations did you have with Mr. Taylor about the Time Oil Company monthly payments?

A. I know I had a conversation with him when it was originally done.

Q. And that would be when?

A. Oh, I couldn't tell you what year it started.

Q. And what did you say to Mr. Taylor?

A. I told him I had to take this cash rebate in cash, and I told him where I was putting it, where I was putting the money. [2752]

Q. You told him that for the purpose of having that recorded on your income tax return?

A. Hicks Taylor and I never talked about income tax returns.

Q. Then why did you tell him that you were receiving it?

A. It was the arrangement I had to make with Green on the deal. That was a new deal that I had to go into and I explained it to him.

Q. Now, Mr. Forster—

(Testimony of Hans Forster.)

A. (Continuing) I think it was the only cash rebate that we actually ever received.

Q. Mr. Forster, what I am trying to understand is how each month these sums, which varied by the case, became known to Mr. Taylor so that he could record it in your income?

Mr. Griffin: I submit he has answered that question by saying the entire sum was income in there and not reported.

The Court: Objection overruled.

Q. (By Mr. Moriarty continuing): I am asking how you conveyed the information to Mr. Taylor after the original conversation that you had, where you were getting one and one-half cent discount on the volume of your [2753] gas purchases?

A. In cash.

Q. In cash. A. That is right.

Q. How would Mr. Taylor know unless you told him each month what the cash was?

A. He wasn't taking it each month. He could have got the information either from me or from Time Oil.

Q. Well, unless——

A. (Interposing) I don't know if he got the information from Time Oil or not. He knew about the arrangements.

Q. Did Time Oil report to Taylor what you got each month on a gas rebate in cash?

A. I don't know if they reported to him each month, or if they reported once a year, or if they didn't report.

(Testimony of Hans Forster.)

Q. This was paid in currency to you?

A. That is correct.

Q. And usually delivered to you?

A. That is right.

Q. Except when delivered to *Mr.* Wilcox or *Mr.* Bezeau; is that correct? A. Bezeau. [2754]

Q. Bezeau; and then they delivered it to you?

A. That is right.

Q. And you took it up to Issaquah?

A. I took it up to the bank where they delivered to Issaquah or Alpine.

Q. Did you go directly from delivery by *Mr.* Green to the bank? A. Directly?

Q. Yes. A. No.

Q. Did you keep any record? A. No.

Q. You are sure that all these sums had been deposited in 198?

A. Well, it is the place I put it. So far as I am concerned, it is all in there. I don't know why it shouldn't be.

Q. And how would *Mr.* Taylor find it out?

Mr. Griffin: Objected to as repetitious.

The Court: Objection sustained.

Q. (By *Mr.* Moriarty continuing): After this original conversation, do you recall any other reports to *Mr.* Taylor from the original conversation about Time Oil? [2755]

A. Oh, I think we talked about it.

Q. How many times?

A. I don't know. Whenever we felt like talking about it. I suppose, when something came up. I

(Testimony of Hans Forster.)

think I told him when the Signal Oil wanted to go ahead and meet the competition to one and one-half cents, and Time Oil increased it to two cents to hold the business.

Q. They didn't tell him the amount, though?

A. The amount of what?

Q. The amount you were getting monthly?

A. Well, I told him it was two cents a gallon.

Mr. Moriarty: May I have Exhibit 154?

(Whereupon, exhibit was handed to Mr. Moriarty by the Clerk.)

Q. (By Mr. Moriarty): Handing you what has been marked as an exhibit, Government's Exhibit 154, which purports—which is the stipulation by counsel in regard to the cost of the barn on your property at Issaquah. A. Falls City.

Q. (Continuing) Or at Falls City, and which has a total of fourteen thousand seven hundred eighty-four dollars and eighty-one cents. [2756]

Do you recall building that barn? A. Yes.

Q. And during the years that it purports to state, between 1946 and 1947?

A. That is right.

Q. Now, that was not the property of Issaquah Creamery Company?

A. No, the barn was in my name.

Q. And you personally contracted for the building of the barn?

A. I didn't contract for it. It was on a——

Q. (Interposing) Time and material basis?

A. Time and material basis, yes.

(Testimony of Hans Forster.)

Q. And then you discussed it with the carpenter?
A. Yes, sir.

Q. And the lumber suppliers?

A. Oh, I think the carpenter made most of the deals with the lumber suppliers and producers. He handled it pretty well.

Q. It was known that it was being built by you personally?

A. Well, I would think so, sure. There was no question about it.

Q. Why, then, did the Issaquah Creamery Company [3757] pay the bill?

A. Well, so far as Issaquah Creamery Company was concerned, that is where the bills came in and Mr. Erickson paid them.

Q. Did he ever have any conversation with you at the time the barn was in the process of being built as to what account it was to be paid from?

A. No, we never talked about it, what he was going to charge it against, or where he was going to put it. He knew that the barn was built and he knew it was on my property there and there never was any question in my mind that there was anything wrong about building the barn.

Q. All right: now, as I understand it, when Mr. Forster didn't know what to do with the money because it didn't have an account——

Mr. Griffin: (Interposing) Mr. Erickson.

Q. (By Mr. Moriarty continuing): Or Mr. Erickson, that he didn't have an account where to put it, he came in to you and gave you the money?

(Testimony of Hans Forster.)

A. That is right.

Q. But when he got a bill for you for anything, he paid the bill without talking to you?

A. Well, he definitely did. [2758]

I don't know if part of this thing was made on Alpine Dairy check, or part Issaquah Creamery check, or if he charged it against my drawing account. I don't know.

Q. Did you know you had a drawing account at Issaquah?

A. I understood at both places.

Q. Who told you you had a drawing account?

A. Hicks Taylor did.

Q. Hicks Taylor did; did Mr. Erickson ever tell you?

A. Well, I never asked him what he charged. He comes under Mr. Taylor's supervision, and if Taylor told him I had a drawing account, there was never any question about it.

Q. When the first bill came in from the Preston Mill Company for the lumber, did Mr. Erickson ask you anything about the charge?

A. He never asked me about any of the charges that—for the bills that came in there. He knew I was building the barn, and where he would apply it on the books, I wouldn't know. I never asked any questions about it. There was nothing wrong about the deal.

Q. That is a substantial sum of money? [2759]

A. Well, of course.

(Testimony of Hans Forster.)'

Q. And it extended over a considerable period of time?

A. Well, you can't build a barn like that in sixty days.

Q. I know you can't, and you were down there quite frequently?

A. Well, of course, they built the barn for me so I certainly watched them.

Q. And you dealt with the suppliers?

A. No, I didn't deal with all the suppliers. Mr. Anderson, who actually built the present creamery over the last thirty years, he is the fellow; and Stuart Darst, another local boy, built the barn, and Mr. Anderson made arrangements for the lumber, and made arrangements for the blocks and he bought the stanchions.

Q. These bills didn't come to Issaquah Creamery Company, did they?

A. They certainly did. They didn't come to Hans Forster.

Q. Why didn't they?

A. All those bills on this barn came to Issaquah Creamery Company.

Q. And you had no occasion in 1946 or '7, when it [2760] came to make up your income tax return, that you received fourteen thousand dollars of Issaquah money that had been taken as a deduction as a plant expense——

Mr. Griffin: (Interposing) Just a moment. I object to the form of the question.

Mr. Moriarty: I will withdraw it.

(Testimony of Hans Forster.)

Q. (By Mr. Moriarty): When you came to make your return in 1947, did it occur to you that you had received \$12,503.84 from the Issaquah Creamery Company's plant expense fund?

A. No, of course, it didn't. I didn't know what they charged it on the books for, if they charged it against my drawing account, or against my salary account; I never asked any questions about it.

Q. Or did you want to know?

A. I don't know why I should have known about it.

Q. I see.

A. Mr. Taylor knew I was building the barn and he knew that Mr. Anderson was going up there, and he knew that material came in.

Q. Well, now, this is the first introduction of Mr. Taylor we have had to the barn. [2761]

Tell us how Mr. Taylor got acquainted with the barn.

Mr. Keesling: If the Court please?

The Court: I beg pardon? Can't you hear?

Mr. Keesling: He is standing 'way over there. It is hard to hear him.

Mr. Moriarty: I will raise my voice, Mr. Keesling.

Will you read the question?

The Court: Mr. Reporter, read the question.

Mr. Moriarty: Read it loud.

(Whereupon, preceding question was read by the reporter.)

(Testimony of Hans Forster.)

A. Well, Mr. Taylor knew when I bought the farm.

Q. (By Mr. Moriarty): Was he present?

A. I asked him about it.

Q. When was the farm bought?

A. The farm was bought probably in the late thirties; I am not too sure.

Q. Now, we are talking about 1940.

Mr. Griffin: You wanted an introduction [2762] to the barn so that he is introducing the farm before he gets to the barn.

The Court: Just a moment. You may continue with your answer, Mr. Forster.

The Witness: Thank you.

A. (Continuing) I told him before I bought the farm that there was a chance to get 100 acres in the Snoqualmie Valley, and I knew the renter on it and he was a very good producer, and I knew the fellow that owned it, and I talked to Mr. Hall about it, and he thought it was a good buy at that basis, so I asked Mr. Taylor if he thought it was okeh, and I felt later on we could use it for advertising purposes, and so we made out the check from, I think, Alpine Dairy, or Issaquah Creamery Company, and paid the Federal Land Bank on it where Mr. Moore had a mortgage.

Q. (By Mr. Moriarty): That is in 1930?

A. I am quite sure it was later than 1930. I said "late thirties."

Q. The barn came into being, according to the stipulation, in July, 1946.

(Testimony of Hans Forster.)

Tell us how Mr. Taylor got acquainted with the barn. [2763]

A. He got acquainted with the barn because I told him about it—the barn—and the thing was one of the oldest ones in Snoqualmie Valley. I think it was built between 1880 or '85. Some of the old-timers up there knew about it yet, and we got into trouble with the Seattle Health Department, and tried to fix it up the best I could, but then, they finally said unless this barn was built, that Mr. Allpress couldn't ship Grade A milk.

So, I had Mr. Anderson give me some kind of estimate about how much it would cost, and that is when I told Mr. Taylor about it—I was going to build the barn, and there was no introduction of Mr. Taylor into the barn. He just knew about building the barn.

Q. Or did you just assume that he knew?

A. I told him about it. There was no assuming. He knew about everything that I did.

Q. He didn't write these checks?

A. Who?

Q. Mr. Taylor?

A. No, of course, he didn't.

Q. They were all written at Issaquah?

A. That is right. [2764]

Mr. Moriarty: It is time to adjourn.

The Court: Ladies and Gentlemen of the Jury:

We will now recess for lunch. The Court calls your attention to the admonition given on similar occasions, and asks that you heed it on this occasion.

(Testimony of Hans Forster.)

You may now be excused until 1:45.

(Whereupon, the Jury retired from the courtroom.)

The Court: Court will recess until 1:45.

(Whereupon, at 12:17 o'clock p.m. a recess was had in the within-entitled and numbered cause until 1:45 o'clock p.m. March 31, 1954, at which time, counsel and defendants heretofore noted, being present, the following proceedings were had, to-wit:) [2765]

* * * * *

The Court: You may proceed, Mr. Moriarty.

Q. (By Mr. Moriarty): Mr. Forster, one of the offices that you hold is a Director of the Washington State Bank at Issaquah?

A. That is right, yes.

Q. And how long have you been such?

A. Oh, I would say five, or six, or seven years. I can't tell you the first year.

Q. And, if—who invited you to become a Director of the Washington State Bank?

A. Oh, I would say the Board that was—that was the Board of Directors before I got in there. They enlarged the Board.

Q. Was Mr. Jensen one of the Directors?

A. Mr. Jensen is a Director and Vice-President of the Bank, yes.

Q. And who are the other directors?

A. Well, they got Hi Wallace, from Duvall, and "Heinnie" Bratt from Seattle Rebuild: and Carl

(Testimony of Hans Forster.)

Rudd from North Bend, and Wheeler Cox from Bellevue; Al Constance from Bellevue.

Q. That is sufficient. They are representative of that area?

A. Well, they are representatives of different areas [2770] and different walks of life.

Q. And one of your functions as a Director was to see that the bank was honestly and efficiently run?

A. Well, I think that is part of the duties of a bank director.

Q. And you were familiar with that obligation when you became a director?

A. Well, they asked me to be a director, and after I was a director for a few years, there was some pamphlet put out by, I think, National Banking House Association on the duty of a bank director, and I guess none of us actually knew what it was until we read it.

Q. You familiarized yourself at that time?

A. Yes, that is right, I read it.

Q. And you meet how many times a month?

A. Once a month.

Q. In cash or in check? A. In check.

Q. How much?

A. Well, we started out with five dollars, and now we are getting twenty-five dollars.

Q. And you owned how many shares in the bank at that time? [2771]

A. Well, I think originally the Creamery owned

(Testimony of Hans Forster.)

five shares, that as a business house to go out to keep the bank from going broke.

Q. How many shares did you own when you became director?

A. I can't tell you how many shares I owned at that time.

Q. How many do you now own?

A. I can't tell you, offhand.

Q. 100?

A. I would think so. It is a very small percentage of what the whole structure is.

Q. And did it become your duty as one of the Directors to review loans made by the bank?

A. No. The loans of the bank were passed on by the Executive Committee of the Bank with Mr. Hall and Mr. Jensen and Mr. Cox and Mr. Rudd, and after they got all the information together, they would make a recommendation to the Board, and tell us the circumstances and the Board voted on it, for anything I think that amounted to over five thousand dollars.

Q. And each one of those was approved by the Board of Directors individually?

A. Who? [2772]

Q. Each one of those loans that were recommended by the Executive Committee was approved by the Board of Directors?

A. As individuals, no.

Q. As the Board?

A. Well, we have the Board meeting and each manager of each branch would——

(Testimony of Hans Forster.)

Q. (Interposing) Report?

A. (Continuing) ——would report and read the loan applications down.

Anything that was over five thousand dollars.

Q. And you would ask questions?

A. Well, we asked—do you want me to answer, or if you know it, you tell me.

Q. I don't know as much as you do about it.

A. Well. I will be glad to tell you.

Q. If you answer my questions, it will be shorter.

A. I would like to explain it to you; if you want me to tell you about it I will be glad to do it, Mr. Moriarty.

Q. Did the Board pass on these loans after the manager reported?

A. Not on the individual loans. The manager read [2773] it off and explained what the loan was, and how much the account owed, and how much that his limit was, and then if anybody had any objections to it, or didn't figure it was right, or any other circumstances, we could stop the manager right there and each one of the members had his say on it if they didn't figure it was satisfactory.

Q. And you participated in those questions?

A. That is right.

Q. And occasionally, did the Board question the advisability of making the loan?

A. I would think so. I think they probably questioned some of the advisability as to the limits of certain loans. There is a lot of farm loans up

(Testimony of Hans Forster.)

there, and a lot of loans on cows and a lot of loans on land, and on houses.

Q. And it would be a question of reviewing his assets and liabilities in determining whether it was a good risk for the depositors of the bank's money?

A. Well, like I said before, that, combined with the recommendations of the Executive Board, and it was very, very seldom that the Executive Board was overruled by the Board.

Q. But it had the final say-so? [2774]

A. It had the final O.K. on it, yes.

Q. And that was the bank in which you had 198?

A. That is right.

Q. And the Board declared payment of interest at stated periods?

A. Well, I think that probably it came up once a year, what the policy was going to be.

Q. Would it be twice a year?

A. It was twice a year that the interest was put into the safety deposit books but I think the policy, so far as interest rate was concerned, was mostly at the time of the annual meeting, from what I can recall.

Q. And you voted for the payment of interest?

A. Yes.

Q. And that, of course, brought to your mind a substantial balance in 198 during 1945 to 1949?

A. At the time that I voted on the interest rate that it came to my mind? It came to my mind every time that I deposited some money in 198.

(Testimony of Hans Forster.)

Q. It also came to your mind at the time you approved the interest rate, too, did it? [2775]

A. I don't think that——

Q. (Interposing) It didn't occur to you?

A. It didn't have anything to do with me voting one way or the other on account of my 198.

Q. Did the Board of Directors also determine the amount of dividend to be paid upon stock of the Washington State Bank?

A. That is right.

Q. And did you participate in that?

A. Yes.

Q. And did you vote for the dividend?

A. Yes.

Q. And you knew you were receiving a dividend then in due course? A. That is right.

Q. Did you report those to Mr. Taylor?

A. That is right.

Q. At the end of each meeting?

A. At the end of each meeting. The dividends wasn't——

Q. (Interposing) At the end of each dividend meeting?

A. Well, dividends was twice a year, every six months, and I reported the dividends to him at the end of each year. [2776]

Q. At the end of each year; and did you do that in writing?

A. No, I told him when he came up to the house.

Q. You mean on all these reports were at lunch?

A. That is right. I don't think I ever, in the

(Testimony of Hans Forster.)

20 years, ever wrote Hicks Taylor a letter in my life.

Q. Now, as a Director, you had a sheet before you with the other Directors as to what the managers were reporting on loans?

A. Well, we have a regular book that has——

Q. (Interposing) All of the information in it?

A. Not all the information. It has the loans in it of the individual accounts and how much the loan limit is, and what they borrowed during that month, or what the application is for the loan, and they go right down the line in the different branches they have, six or seven banks there.

Q. You felt qualified to be a Director?

A. Well, they still have me on there. If they didn't want me, they could vote me out.

Q. But you felt well qualified, did you? [2777]

A. Well, I didn't, probably, myself do it. They must have figured I was qualified; otherwise, they wouldn't ask me.

Q. And you felt you were qualified or you wouldn't have accepted?

A. To come back again, I asked Hicks Taylor again if I should accept it, if you want to know about it, and he said it couldn't do me any harm; it might do me some good.

Q. Hicks Taylor wasn't at any of these meetings?

A. No, but I asked him before I became a director of the Washington State Bank.

Q. And you got his approval?

(Testimony of Hans Forster.)

A. That is right.

Mr. Moriarty: Will you hand me Exhibits 178, 158, 157, 158 and 159?

It is the Merrill Lynch checks.

(Whereupon, exhibits were handed to Mr.

Moriarty by the Clerk.)

Q. (By Mr. Moriarty): Your counsel inquired of these checks to Merrill Lynch, Pierce, Fenner and Beane, and they appear to be checks of the Issaquah Creamery Company payable to that concern and signed by Mr. Erickson. [2778]

Didn't you give Mr. Erickson the instructions about payment of that bill?

Mr. Keesling: If the Court please, I think those checks were signed by more than one person.

The Court: Is that part of the question, who signed them?

Mr. Moriarty: It isn't a question of who signed them.

Mr. Keesling: He stated they were signed by Mr. Erickson.

Mr. Moriarty: And also by Miss Neukirchen, but my question is:

Q. (By Mr. Moriarty continuing): Did you give instructions to Mr. Erickson, or I will also include Miss Neukirchen, to make out the checks for those amounts to that payee?

A. Well, I think I probably told them about the first check of \$1200. So far as I can remember back, this was a couple of carloads of eggs that—future eggs that I bought, and I signed the first

(Testimony of Hans Forster.)

check of \$1200. I think the other two checks probably was when Mr. McDowell called up and asked for some additional coverage, because the market probably went [2779] down and he asked for additional checks.

Q. So, you gave instructions to write that check?

A. Well, so far as I know, I am positive that I gave instructions about the first one if Merrill Lynch called up for extra coverage, he would sure call Issaquah Creamery.

Q. Handing you a check made out to the same company for \$3600, also on the Alpine Dairy, no one got instructions on that check, did they?

A. No, I made it up right there in the office of Merrill Lynch.

Q. Now, when it came back cancelled, did anyone in the—did Mr. Erickson inquire as to what this would be charged to?

A. No, he didn't. I put it on the stub and told him what it was.

Q. You wrote down on the stub?

A. That is right.

Q. Those stubs are missing?

A. You might ask Mr. Erickson what he done with them after I gave them to him.

Q. Now, did you ever have any difficulty with Mr. Keck in the Apex Farms, where he had some items where he had no place in the books to place them? [2780]

A. I never—

(Testimony of Hans Forster.)

Mr. Griffin: (Interposing) I object to the form of that question.

Q. (By Mr. Moriarty): Did you have any inquiry from Mr. Keck, who kept the books at Apex Farms, as to where certain items should be placed on the books of Apex Farms?

A. He never talked to me about any of the books.

Q. Did you ever have any inquiry from Mr. Schneider? A. No.

Q. Or from Mrs. Simonson at Finstad and Utgard? A. No.

Q. Or from any of these others? A. No.

Q. But you did have trouble with Mr. Erickson in knowing where to put it on the books?

A. That is what he told me.

Q. Now, that indicated to you that there was something wrong with the books, didn't it?

A. What do you mean, "indicated to me there was something wrong with the books"? [2781]

Q. That he didn't have a place to put something payable to the Issaquah Creamery Company on the books of Issaquah Creamery Company?

A. Well, it wasn't necessary to give me any cause there was anything wrong. I didn't know there was anything wrong with the books until Touche, Niven, Bailey and Smart came in.

Q. When did he first tell you, to your best recollection, the first occasion Mr. Erickson came in to you with a check of either Alpine Dairy payable to Alpine Dairy, or to the Issaquah Creamery Com-

(Testimony of Hans Forster.)

pany that he didn't know where to put it on the books, or that he didn't have a place to put it on the books?

The first time?

A. I couldn't tell you which year or what date the first time he told me about it.

Q. Would it be back in 1942?

A. It probably was in 1942, or maybe it was in 1940. It was just off and on. It wasn't regular, and after he mentioned it to me a couple of times and put the checks on my desk or in my drawer, I didn't ask any questions about it.

Q. That brings up the question about the sales over quota which weren't put on the books. [2782] You recollect Miss Neukirchen's testimony?

A. That is right.

Q. And they were not put on the books?

A. I don't know if they was on the books or not. No one told me they wasn't on the books.

Q. The sales slips were put on your desk?

A. That is right.

Q. Or in your drawer? A. Yes.

Q. And you allowed them to accumulate and then didn't you throw away those sales slips?

A. That is correct.

Q. And you did that about once a week?

A. Oh, maybe a couple of times a month.

Q. Why did you throw away those sales slips?

A. As far as I was concerned, they didn't mean anything. They could have taken them back out of the drawer again if they wanted them. I am sure

(Testimony of Hans Forster.)

that if they didn't need those sales slips in the books——

Q. (Interposing) But any evidence of those payments were on those sales slips?

A. Well, they took them in, in the first place. The office girls checked the drivers in. What they recorded and what they didn't record, I didn't know about it. [2783]

Q. I am talking about these over-quota.

A. Well, there wasn't any over-quota.

Q. Didn't you testify to sometime where you had to make some adjustment between people about milk, or ice cream mix and ice cream applications?

A. If you followed the—my explanation of that yesterday, I am quite sure that isn't—the day before yesterday—that isn't what I said.

Q. All right. Tell us.

A. So far as we were concerned, we never made any over-quota of ice cream mix. I think there was one time that we didn't cut off at the right time and the War Food Administration split the year in half, or three different ways, and told us to make it up part of the following month, and the other part the next month so that we could try and get in line. You couldn't cut the mix off from one day to another on this milk solids and milk fat usage.

Q. You heard Miss Neukirchen's testimony, didn't you?

A. That is right, and she talked to me about it

(Testimony of Hans Forster.)

in the first place, and I explained just exactly what was happening.

Q. And she didn't record those?

A. She didn't tell me that she didn't record the money. [2784]

Q. She put them on your desk?

A. Well, that is true enough, but——

Q. (Interposing) And she put the sales slips——

Mr. Griffin: (Interposing) I still suggest he be permitted to finish his answer.

The Court: Did you finish?

Mr. Moriarty: He becomes quite eloquent.

The Witness: Well, Mr. Moriarty is not going to let me go ahead and tell the story how it happened. That is how I would like to do it.

The Court: You may proceed, Mr. Forster.

A. (Continuing) When the War Food Administration came along and told us that we could make a certain percentage of the amount of mix that we made at Issaquah Creamery during a certain period in the year, they at the same time gave us a base period which was the year previous, and, for instance, if they said during the month of May, say it was in 1944, or 1945, they told us in 1945, during the month of May, "You can make 85 percent of the amount of milk solids and fat you used during May, 1944."

When August came along, they probably told us "You could use 70 per cent." It was all set down in [2785] War Food Order No. 8.

Those happened during the base period, which

(Testimony of Hans Forster.)

was a year before the order came out, so that nobody knew at that time that there was such an order coming. We had six customers all over the country, at least, in the Northwest. We shipped to Oregon and to Eastern Washington and also shipped to Alaska.

In the meantime, from the date that the base period was set, the War Food order actually got into being, and got into force, some of the customers quit us, and probably went to other creameries and all the mix that we shipped to Alaska, to Crystal Dairy, they had their own freezer and bought mix from us, and the Juneau Dairy, and a dairy in Anchorage—all that mix couldn't be shipped up that we had the basis for during the base period, because there was only this essential material that was able to go up on those boats and they didn't want anything like ice cream mix to go up there.

So, the minute that came into being that we couldn't send our mix up, we made application to Washington, first to the local War Food Administration here, and we explained it to them, what our situation was. We had this mix quota. We couldn't freeze the [2786] mix, and we had this milk, and we figured we was entitled to try to use this mix that we couldn't sell in Alaska and put it into the form of ice cream. We made application from the Renton Ice and Ice Cream in Renton. The population in the Renton territory was, like around Seattle, especially in the Renton part, increased more than double, and we figured that as

(Testimony of Hans Forster.)

long as we had this mix quota, we should be able to freeze it, but we never at any time ever made over-quota ice cream, and that is why then we sold some mix to Renton, and we froze some of this mix that was quota mix. It wasn't over-quota mix. And that is why this money—this cash that Miss Neukirchen gave me, and the checks that came from Ray Schneider in Renton, came to me.

Now, if they recorded the money, I don't know, and this was all cut up the minute we got the approval from Washington and they gave us the right to freeze all our ice cream freeze all this mix into ice cream we had, so long as we made equitable distribution, and that was part of the order.

That is the whole story, and there was never at any time any money held out either to evade taxes or anything else on this situation. [2787]

Q. (By Mr. Moriarty): Have you completed your answer? A. Yes.

Q. Miss Neukirchen didn't record some of those sales in the books?

A. I don't know if she didn't record.

Q. You heard her testimony?

A. Well, that is right, and as far as I was concerned, when I told her when she was worried about it, "So far as I am concerned, you are not doing anything wrong."

Q. You took the sales slips away?

A. She had them first.

Q. When she put them on your desk, she parted

(Testimony of Hans Forster.)

possession, and when you threw them away, there was no other record, was there?

A. She must have had a record from the driver that turned them in.

Q. And they went into 198?

A. That is right.

Mr. Moriarty: Will you give me Exhibit 182?

(Whereupon, exhibit was handed to Mr. Moriarty by the Clerk.)

Q. (By Mr. Moriarty): Now, Mr. Forster, I hold in my hand the [2788] Exhibit 182 which consists of an itemized bill of the Washington Athletic Club for \$1,695.92, and testimony has been introduced which shows that you asked for an itemization from Mr. Strand, I think, is that true?

A. I wouldn't know if he is the man.

It is the first time I seen him. I asked the office for it, yes.

Q. And they made that itemization?

A. Yes, I am sure they did.

Q. And you received it?

A. I think it was mailed to me at Issaquah.

Q. And you wrote up the bill, you wrote up the check in payment of it?

A. I signed it, yes. Mr. Erickson wrote it up.

Q. I notice it is not on your personal account, but on the Issaquah Creamery account, and it is on a firm check.

You regarded that as your personal expense?

A. That is right.

(Testimony of Hans Forster.)

Q. Do you know that that was charged to advertising on the books?

A. I don't know what it was charged against. If it was charged against my drawing account, or charged against my salary account. I didn't ask any [2789] questions.

Q. But you wrote the check, and you——

A. (Interposing) I didn't write the check. I signed it.

Q. And you signed it, and you had told Mr. Erickson that you regarded it as your personal expense?

A. That is the reason I got a separate statement.

Q. And the statement was made out to you?

A. That is right.

Mr. Moriarty: Will you give me Exhibit 67?

(Whereupon, exhibit was handed to Mr. Moriarty by the Clerk.)

Q. (By Mr. Moriarty): Mr. Forster, your counsel inquired about a check that appears on Exhibit 67, which is payable to the Northwest Basketball Tournament, and I believe at that time, you recited something about the basketball activities.

This check is drawn by you apparently away from the office for \$100? A. Yes.

Q. And it finds its way into your personal savings account by the endorsement on the back.

Can you explain how that got into your personal savings account? [2790]

A. Yes, I think I can.

Q. Well, tell me.

(Testimony of Hans Forster.)

A. Those checks was entry fees to the Northwest Basketball Tournament which was held each spring at the University of Washington Pavilion and in order for those teams to assure that those teams was going to participate in them after they set up the schedule, they asked each team to put up \$100 that they would appear, and after the tournament was over and the teams appeared in there, they mailed the check back.

Q. Why didn't it go back in the Alpine Dairy account?

A. Because they mailed it to Issaquah Creamery.

Q. This went into account 198?

A. That is right.

Q. That wasn't the Issaquah Creamery Account, was it?

A. No, but it was Hans Forster and Alpine Dairy account.

Q. And it appeared on the books of the Alpine Dairy as a deduction, didn't it?

A. I don't know what it appeared on the books of the Alpine Dairy for. [2791]

Q. And then when this check was cashed, whenever it was cashed——

Mr. Griffin: (Interposing) May I interrupt? I don't think it is an Issaquah Creamery check.

Mr. Moriarty: It is Alpine Dairy.

Mr. Griffin: Pardon me.

Q. (By Mr. Moriarty continuing): When this

(Testimony of Hans Forster.)

check was cashed, the Alpine Dairy account was debited \$100?

A. I would think so. I don't know how it works.

Q. You are a Director of the Bank?

A. That has nothing to do with being a Director of the Bank.

Q. And Alpine Dairy?

A. I wouldn't think so.

Mr. Moriarty: Will you give me 179 and 180?

(Whereupon, Exhibits were handed to Mr. Moriarty by the Clerk.)

Q. (By Mr. Moriarty): I think in the inquiry in regard to the Klopfenstein bills, your counsel asked you if there were any basketball suits, or something like that.

Will you examine 180 and identify any items you think [2792] were Christmas presents to the basketball players, or other gifts?

A. Well, I knew that we didn't buy our basketball suits at Klopfenstein's, but we did——

Q. (Interposing) Well, now——

A. (Continuing) We did buy some presents. I couldn't item by item.

Q. Have you finished your answer?

A. I can't tell you each item which was used for graduation gifts, or gifts to basketball players or gifts to anybody else. I couldn't tell you which part of it was mine. I am sure not the suits were given away.

Q. There weren't any suits?

(Testimony of Hans Forster.)

Well, I asked you, and you say you can't identify any items on here? A. No.

Q. But you do identify those for checks of Klopfenstein's as having been signed by you and payable to Klopfenstein's? A. That is right.

Q. And they are on Alpine Dairy checks?

A. That is right.

Q. And that is the type of check that you used for—with the little stub? [2793]

A. That is right. I made them right out at Klopfenstein's.

Q. And paid them at Klopfenstein's?

A. That is right.

Q. When these came back, did Mr. Erickson make any inquiry to you about these checks to Klopfenstein's?

A. Well, after the stub was marked "Klopfenstein's,"——

Q. (Interposing) Well, what else was on it?

A. Marked "personal"; "P-e-r-s" (spelling).

Q. P-e-r-s (spelling)?

A. On anything personal, that is what I marked down on the check stub on those small ones I marked down.

Q. There was nothing on the face of the check; he would have to go to the stub?

A. Well, he got the stubs.

Q. He got the stubs.

Mr. Moriarty: Will you give me Exhibit 228?

(Whereupon, exhibit was handed to Mr. Moriarty by the Clerk.)

(Testimony of Hans Forster.)

Q. (By Mr. Moriarty continuing): Is there an accompanying [2794] invoice, 227 or 229; is there an accompanying 227 or 228? Do you know of any jewelry that you bought from Jensen and Nielsen for the basketball players?

A. Well, I know of wrist watches I bought for the basketball players from Ben Bridge.

Q. I am asking if you know of any from Jensen and Nielsen? A. No.

Q. You recall the testimony in that case was about a brooch and some ear rings of a substantial amount? A. That is right.

Q. That wasn't purchased for the basketball team?

A. No, but a lot of our wedding gifts for customers and graduation gifts for customers' children and wedding gifts for customers—a lot of it was paid out of our own account at home.

Q. But these were paid by the Alpine Dairy account on your——

A. (Interposing) That is right.

Q. On your small stub checks?

A. The reason that was made out is because I didn't want the Missus to know about it. I bought it [2795] a couple of days before Christmas, and I didn't want her to find out about it, before she got it for a Christmas present. That is the reason I made it out at Mr. Jensen's. It wouldn't be too much of a surprise if she got the statement before she got the present.

Q. You have got quite a number of checks there

(Testimony of Hans Forster.)

written at various times that weren't at Christmas time? A. That is right.

Q. And they were all on your small bank account, or small checkbook?

A. You have got quite a number of checks, December 9, December 24 and August 22d for \$46.74. Both of those was made out right before Christmas and I didn't want her to get the statement, and the stub was definitely marked who it was for, and what it was for.

Q. The one on August 22d was long before Christmas?

A. But you mentioned the big one, six or seven hundred dollars. The other one was \$47 before Christmas. I don't know what it was for. It was a customer's present.

Q. This exhibit 156 for the sailboat was [2796] also paid for by an Alpine Dairy check, was it not?

A. That is right.

Q. And charged to expenses of the Alpine Dairy?

A. I wouldn't know what it was charged for.

Q. You never had occasion to look up at any time or make any inquiry?

A. I didn't look up any of them at any time.

Q. Now, I understand, in connection with your daughter's continuing on the payroll, that you discussed this with Mr. Taylor?

A. That is right.

Q. And that he approved of it?

A. That is right. He said, "Might as well keep

(Testimony of Hans Forster.)

it up. I can't see no reason why you should discontinue it." That is the way he said it.

Q. I will ask you if you testified on March 8th, 1951, before—at Room 1004-A, U.S. Court House, in the presence of Mr. Kachlein, your attorney, Mr. Brody, Kenneth Brody, your attorney, and Mr. William H. Marx, Internal Revenue Agent, and Mr. Ira Eppler, Special Agent, and if you were not asked the following question, appearing on page 7 in connection with the payment of the salaries to your daughters while they were in Europe, if you were [2797] not asked this question:

"Did you also discuss with Mr. Taylor the payment of salaries to your daughters while they spent their year in Europe?"

And if you did not make the following answer:

"No, after we started, we just kept it up. If they put in full-time work, or part-time work, we kept the salary up until the eldest daughter got married, and she went on the actual payroll."

Did you make that answer?

A. I probably did, if that is what it says in there.

Q. Did you make this answer:

"Did your daughters render any service whatsoever to the corporation while they were in Europe, full-time, part or any time?"

And did you make the following answer:

"No."

A. If that is what it says there, that is probably what I said, yes.

(Testimony of Hans Forster.)

Mr. Griffin: May I request counsel to read the beginning question and answer, 33, which is the basis for those answers?

Mr. Moriarty: You can read them in redirect.

Mr. Griffin: I think in fairness to the witness, it should be read to explain his answers which were based on Question 33 and Answer 33.

The Court: Do you wish to see the answer to the questions, Mr. Forster?

The Witness: Yes, please.

The Court: Do they have a copy?

Mr. Moriarty: Yes, they have a copy. Mr Griffin can read it, if he wants to. I don't think I am required to.

The Court: No. The witness can see it and read it if he wants to, and make an explanation.

The Witness: I think that follows ahead of it. It says about the conversation I had with Mr. Taylor.

The Court: The question is, Do you wish to explain your answer at all?

The Witness: Yes, I would like to explain it.

The Court: All right.

The Witness: They asked me, I don't know if it was Mr. Marx or Mr. Eppler—how about having the children on the payroll? I told them that after they started to get into high school, they wanted to make their own spending money and they [2799] wanted to work in some of the grocery stores up at Issaquah, and I told them, if they want—had ambition and wanted to go to work, there was

(Testimony of Hans Forster.)

plenty of work that could be done at the Creamery, helping in the ice cream room to put up Dixies, or helping to wrap butter, and so they started there, and for quite a while, I didn't pay them anything out of the Creamery, just gave them a certain allowance at home, and so I mentioned it to Mr. Taylor and told him that probably they should be paid something at the Creamery, and we started to pay them from the Creamery at that time, and, as I remember it, it was quite a low salary basis, but at least they knew they was earning some money for the work they done down there, and when—after we started it, we kept it up until the girls went to Europe, and that is the time I asked Mr. Taylor if we should discontinue it, and he said, "I can't see no reason why you should discontinue it." And that is part of my answer right in there.

Q. (By Mr. Moriarty): I think that the question I asked you, which was asked, is:

"Did you also discuss with Mr. Taylor the payment of salaries to your daughters [2800] while they spent their year in Europe?"

And your answer was:

"No; after we started, we just kept it up. If they put in full-time work or part-time, we kept the salary up until the eldest daughter got married and she went on the actual payroll."

Your answer was that you did not discuss it with Mr. Taylor.

Does that refresh your recollection?

A. Yes; and it says here they started to go to

(Testimony of Hans Forster.)

school, and I mentioned to Hicks Taylor, and I asked, "Should I go ahead and quit paying the salary?" And he said he saw no reason why I should discontinue, and it was part of the arrangements when they first started to work and I couldn't tell you what the year was.

Q. When did your daughters start working?

A. I can't tell you which year, but they started when they got into High School.

Q. Now, did I understand you to say that Mr. Eppler, when he first met you, said that his job was to put you in the penitentiary?

A. That is right; that is what he said in Mr. Tremper's office. [2801]

Q. I will ask you if you testified at this same time that you testified in the previous questions in response to the following questions, page 4, question from Mr. Eppler:

"Will you summarize the remarks as made to you concerning the possibility that your testimony might later be used against you in a criminal prosecution?"

And to that, did you give the following answer:

"Mr. Eppler told me that my testimony might be later used against me in a criminal prosecution, and he also told me that I would not have to testify against myself unless I felt free to do it. He told me I would not have to make this statement unless I wanted to, and he advised me that I could ask my counsel, who was present, any questions I did not understand."

(Testimony of Hans Forster.)

Did you make that answer to that question?

Mr. Griffin: Objected to as immaterial. That hasn't anything to do with the witness's testimony or what he said on his introduction.

This is page 4 of an examination by Mr. Eppler.

Mr. Moriarty: Yes, there is no statement about his job being to put him in the penitentiary.

The Court: This is March 8, 1951.

Mr. Moriarty: He asked him to summarize the remarks made to him about his testimony might later be used against him in a criminal prosecution.

Mr. Griffin: That hasn't anything to do with the matter in issue.

The Court: Is he referring there to the——

Mr. Moriarty: (Interposing) To the time they had this conversation.

The Court: That doesn't appear from what you read, but is there any question about that?

Mr. Moriarty: I don't believe there is.

Mr. Griffin: Yes, very much so, your Honor. This is the fourth page of an examination under oath of this witness in which, after examination for four pages, then he is asked in regards to the remarks concerning his right not to testify.

Mr. Moriarty: "The possibility that your testimony might later be used against you in a criminal prosecution."

The Court: As I understand, Mr. Moriarty stated that these answers, just read, were related to a conference held, I believe it was, in August, was it [2803] not, 1950?

(Testimony of Hans Forster.)

Mr. Moriarty: Yes. That was summarizing the August 29, 1950 meeting, as I understand it.

Mr. Griffin: Well—will you excuse us just a moment, then?

This is March 8, 1951. Now, where is there any reference to August 28th of the previous year?

Mr. Moriarty: I do not claim there is any reference to the previous year but this is the meeting following that meeting, the first meeting following the meeting of August 29, 1950, that Mr. Eppler attended with Mr. Forster.

The Court: As I state, I haven't it before me so that I have to depend on what your statement of the situation is, so that if there is disagreement, we will have to wait until after recess.

Mr. Moriarty: Very well, your Honor.

I understood the witness answered it.

Mr. Griffin: There is no question. He answered the question, but it has no bearing on August 28th, the first meeting. That is my point.

Mr. Moriarty: That is a matter of argument.

The Court: The question has been answered and I assume you can move to strike it. [2804]

Mr. Moriarty: Will you give me Exhibit 55?

(Whereupon, exhibit was handed to Mr.

Moriarty by the Clerk.)

Q. (By Mr. Moriarty): Handing you what is marked as Government's Exhibit 55, which purports to be the record of your savings deposits in account No. 198.

(Testimony of Hans Forster.)

I will ask you to examine the balance as of December 30, 1944, in that account.

(Whereupon, there was a brief pause.)

Q. (Continuing) Have you found the place?

A. Yes.

Q. And what is the balance?

A. \$95,091.98.

Q. And will you examine the balance, December 31—or December 29,—1947?

A. December 31, 19——

Q. (Interposing) December 29, 1947.

A. \$105,669.07.

Q. And the balance on December 27, 1948?

A. \$116,95—— \$119,053.08.

Q. And will you examine the balance on December 31, 1949?

Mr. Moriarty: Will you give me Exhibit 134?

(Whereupon, exhibit was handed to [2805]

Mr. Moriarty by the Clerk.)

A. \$91,806.07.

Q. (By Mr. Moriarty): During that year, there was seventy thousand dollars of withdrawals, approximately, wasn't there, during the year 1949?

A. I wouldn't know. You can figure it out on there, I suppose. I couldn't tell you.

Q. Will you look at the deposit in April of 1950, the month of April, 1950, and state whether there were any deposits made in that month?

Mr. Griffin: If the Court please, this was limited in admission. I have no objection, except that I suggest now——

(Testimony of Hans Forster.)

The Court: (Interposing) Was it limited?

Mr. Griffin: I have got no objection, if he goes to April, 1950, except to suggest I will reoffer, in this case, the May 1 audit of 1950 which I deem material, which is not in.

Mr. Moriarty: I don't know how that has any relation to this.

Q. (By Mr. Moriarty): Will you answer the question?

The Court: Just a moment. The question has been raised as to the limited use of—is that 55?

Mr. Moriarty: Exhibit 55, account No. 198, Washington State Bank. If it is limited, I will withdraw the question.

The Court: My notes indicate admitted from 12/44, on. I don't know what it is.

Mr. Le Sourd: I have the notation admitted only for the years involved.

Mr. Patten: I have a similar notation.

Mr. Moriarty: I withdraw the question.

The Court: Do you withdraw the question?

Mr. Moriarty: I withdrew the question. It is time for recess.

The Court: You still have further questions?

Mr. Moriarty: One or two, I think.

The Court: Ladies and Gentlemen of the Jury:

We will now recess, and the Court calls your attention to the admonition given on similar occasions and asks that you heed it on this occasion.

You may now be excused.

(Testimony of Hans Forster.)

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, at 2:46 p.m. a recess was had in the within-entitled and numbered cause until 3:04 o'clock p.m. March 31, 1954, at which time, [2807] Counsel and Defendants heretofore noted, being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated. It is stipulated that the Jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Moriarty.

Q. (By Mr. Moriarty): Mr. Forster, I think you testified that you now have a Cadillac automobile, model year 1950? A. That is right.

Q. You did also have a Cadillac automobile in 1947, didn't you? A. Yes.

Q. You had two Cadillac automobiles?

A. I traded that one in on this one.

Q. And this check marked Plaintiff's Exhibit 160 made payable to the Ryan Cadillac Company for \$3,650, is the Cadillac purchased then at about that time? A. That is right. [2808]

Q. And you also had a Ford convertible that is now in Europe? A. That is right.

Q. And you still have title to that car?

(Testimony of Hans Forster.)

A. That is right.

Q. Mr. Forster, as I understand your testimony, on April 24, 1950, you got a call from Mr. Marx?

A. I think it was about that date, yes.

Q. And then on April 26th you met with Mr. Marx in Mr. Kachlein's office?

A. That is right.

Q. And that was two days later?

A. I think it was two days later.

Q. Mr. Tremper——

A. (Interposing) I think it was probably before that Mr. Marx called me, before the 24th.

Q. Well, four days later?

A. Well, it was—it was a few days later, yes.

Q. And you had by that time hired Mr. Alkire and Mr. Tremper to meet with you and Mr. Kachlein and Mr. Marx?

A. That is the time that we—that I first met Mr. Tremper and Mr. Alkire, and the first time I [2809] met Mr. Marx.

Q. You had given instructions to Mr. Kachlein, didn't you, to hire Mr. Alkire and Mr. Tremper?

A. That is right.

Q. And he had already hired them then.

Why did you want Mr. Tremper and Alkire hired if at that time you thought the books were O.K.?

A. Well, when Mr. Marx called me up, it was more than two days before. It was probably a week before that time. I can't give you the exact date. I don't keep books like attorneys do, or accountants do, and on different occasions, it is just my recollec-

(Testimony of Hans Forster.)

tion when Mr. Marx called me and told me that he wanted to examine the books of my different businesses.

I told him that Mr. Taylor had the books, and he said, "Well, you know that Mr. Taylor is going to be pleaded guilty, and he is going to be sentenced at Tacoma." And I said, "Well, I read in the paper that he pleaded guilty to charges of income tax evasion, and—but, so far, I didn't have any accountant yet that was keeping the books." And he said, "Well, you might as well forget Mr. Taylor. I [2810] am the fellow that got Mr. Taylor—examined Mr. Taylor's own income tax, and I am the one that—I am the one that helped to prosecute him."

Q. Well, at that meeting——

Mr. Griffin: (Interposing) I think there is more explanation, if you want the complete answer, if the Court please.

Mr. Moriarty: I was merely asking an entirely different question.

Mr. Griffin: All right.

Mr. Moriarty: Then the witness is answering.

Q. (By Mr. Moriarty): In that short, brief period of time——

A. (Interposing) Yes.

Q. (Continuing) ——you had Mr. Kachlein hire Mr. Alkire and Mr. Tremper; correct?

A. Well, it was after Mr. Marx talked to me.

Q. Yes, after that telephone call?

A. All right; then I—right away, I called Mr.

(Testimony of Hans Forster.)

Taylor, and he told me to tell them to go to hell, there was nobody that could handle those books except him, that he was the only one that knew about them.

Q. But you had Mr. Kachlein hired—— [2811]

A. (Interposing) Not at that time when Mr. Marx called me.

Q. Now, let's get to the question.

A. All right.

Q. I am talking about this meeting with Mr. Alkire, Mr. Tremper, yourself and Mr. Kachlein.

A. Yes.

Q. Which occurred very shortly after the first call Mr. Marx made to you about a tax problem.

A. It happened after Mr. Taylor—Mr. Taylor went to Tacoma.

Q. Let's forget—you can't forget—Mr. Taylor.

A. I can't forget Mr. Taylor.

Q. For the purpose of this question.

A. This is how it happened. If you want to know how it happened, then Taylor is in the deal.

Mr. Moriarty: I would like the Court to instruct the witness to answer my question.

Mr. Griffin: May the question be read, if the Court please?

The Court: Mr. Reporter, read the question.

(Whereupon, the following was read by the reporter: [2812])

“Q. I am talking about this meeting with Mr. Alkire, Mr. Tremper, yourself and Mr. Kachlein.

“A. Yes.

(Testimony of Hans Forster.)

“Q. Which occurred very shortly after the first call Mr. Marx made to you about a tax problem.

“A. It happened after Mr. Taylor—Mr. Taylor went to Tacoma.

“Q. Let’s forget—you can’t forget—Mr. Taylor.

“A. I can’t forget Mr. Taylor.

“Q. For the purpose of this question.

“A. This is how it happened. If you want to know how it happened, then Taylor is in the deal.”)

Q. (By Mr. Moriarty): At that meeting, you were present, Mr. Kachlein was present, Mr. Alkire and Mr. Tremper? A. And Mr. Marx.

Q. And Mr. Marx; nobody else?

A. Not so far as I know.

Q. And at that time, a remark was made about sloppy bookkeeping?

Mr. Griffin: Just a moment now, if the Court please. [2813]

May I inquire? Is that a question?

Q. (By Mr. Moriarty continuing): Well, was a remark made about sloppy bookkeeping?

A. It wasn’t in my presence.

Q. It wasn’t in your presence? A. No.

Q. Was there anything said about bookkeeping in your presence by anyone?

A. Well, of course, they talked in generalities about the books of the different companies that I had interest in, but I would say 75 or 80 percent of it was over my head. I couldn’t follow along between Mr. Tremper, Mr. Alkire and Mr. Kachlein.

(Testimony of Hans Forster.)

Q. At that time, neither Mr. Tremper, Mr. Alkire, nor Mr. Kachlein had examined your books?

A. No, nobody at that time.

Mr. Moriarty: That is all.

The Court: Now, Mr. Griffin, do you wish to now offer that original?

Mr. Griffin: Yes, sir.

Mr. Le Sourd: No objection.

Mr. Moriarty: No objection.

The Court: At this time, A-61 will become the original? [2814]

Mr. Griffin: Yes, sir; that is my suggestion.

The Court: Of the exhibit. There is no objection from the Government?

Mr. Moriarty: No objection, your Honor.

The Court: It may be so ordered?

Ladies and Gentlemen of the Jury:

You may recall yesterday, I believe it was, that a question arose relative to an exhibit which appeared to be a photostat. Mr. Griffin has now obtained the original and it is now being offered and admitted, and Mr. Griffin may have a question or two in regard to it, so that we will go back at this time and cover that before we have any further cross-examination.

Mr. Griffin: May I say, if the Court please, I demanded from the Government the production of this original on the assumption that the Government had it and they denied it, and Mr. Brody confesses guilt. He found it.

Mr. Moriarty: Apology accepted.

(Testimony of Hans Forster.)

Direct Examination (continued)

Q. (By Mr. Griffin): A-61, Mr. Forster, now in lieu of the [2815] original photostat, which you identified, I will show you the original, and are all items on there in your handwriting? A. Yes.

Q. And you testified that you—that that is dated January 1, 1947? A. That is right.

Q. And is your jotting down of what you considered your assets, is that right?

A. That is right.

Q. And I think that you testified that you discussed those items with Mr. Taylor?

A. That is right.

Q. Now, will you read to the Jury the first item upon A-61?

A. Washington State Bank, \$62,602.02.

Q. Was that an itemization of what you thought you had in the bank, in the Washington State Bank, at that time? A. That is right, yes.

Q. Now, referring to the exhibit just used by Mr. Moriarty, Exhibit 55, which is the ledger sheet of this account in the Washington—in the—what is that Washington State Bank?

A. Washington State Bank, yes, sir. [2816]

Q. The amount you just read was \$62,602.02 as of January 1, 1947? A. That is right.

Mr. Griffin: May I read to the Jury, if the Court please, the balance shown on Exhibit 55 at the nearest date, which is December 28, 1946?

The Court: You may.

Mr. Griffin: Balance, \$62,780.03.

(Testimony of Hans Forster.)

I said, if the Court please, the nearest date.

I overlooked, and there is a December 31st "in" which, I assume, means interest.

Mr. Moriarty: Yes.

Mr. Griffin: \$228.01; the December 19th balance, before the entry, is \$57,279.06; after the entry of the interest, \$57,507.07; and then the December 28th balance, \$62,780.03.

Q. (By Mr. Griffin): Now, I think you testified that Exhibit 124 is a statement—do you know whether Exhibit 124 which bears your signature and is a Hans Forster financial statement, March 31, 1947,—whether that was prepared by Mr. Taylor or by the Bank; do you know which it is?

A. That is prepared by Mr. Taylor. [2817]

Mr. Griffin: I would like to read now, if I may, if the Court please, Exhibit A-61 to the Jury.

The Court: You may.

Mr. Griffin: I am reading from the photostat. Will you follow me on the original, please, Mr. Forster, because you may have to tell me what all of these items are.

January 1, 1947, Washington State Bank, \$62,602.02; Government bonds, \$50,000; Werner and Murphy, \$24,000; Peoples Bank, \$60,000; Apex Farms \$110,000; Brown and—

The Witness: (Interposing) Sharp.

Mr. Griffin: (Continuing) —\$14,600; New England Public, \$18,300; Placer Development Company, \$2,850; Ditto, \$4,325; Minnesota-Ontario, is that?

(Testimony of Hans Forster.)

The Witness: Yes.

Mr. Griffin: \$4,325; Issaquah Creamery Company, \$50,000; Pickering Mortgage, \$1200; Crosby, is that?

The Witness: Yes.

Mr. Griffin: \$1,000; and the next name?

The Witness: Elaine Neukirchen.

Mr. Griffin: \$4,000, with a circle—four thousand with a circle around. [2818]

The Witness: That is four hundred.

Mr. Griffin: Carried into the total column, \$2500; Grill, \$5500; Photo Claim, is that?

The Witness: Arctic Gardens.

Mr. Griffin: \$12,500.

Will you read the next one?

The Witness: Northwest Hotel Supply, \$5,000.

Mr. Griffin: And the next item?

The Witness: I can't even read my own writing.

Mr. Griffin: The figure is \$5,215?

The Witness: \$5,215; that is right.

Mr. Griffin: And the total is \$424,292.02?

The Witness: That is right.

Q. (By Mr. Griffin): Now, Exhibit 124, which is March 31, 1947——

Mr. Griffin: And, may I say to the Court and Counsel, that this is the closest date of any of these financial statements that I have found to January 1, and that is why I am using it?

Q. (By Mr. Griffin continuing) Exhibit 124

(Testimony of Hans Forster.)

shows—reads — Net Worth, Hans Forster, \$686,-
157.28? [2819] A. That is right.

Q. And your statement, A-61 is \$424,292?

A. Yes.

Q. However, what is Issaquah Creamery Com-
pany carried at under A-61, that you have before
you? A. \$50,000.

Q. And is that the same value that the Govern-
ment has used in its net worth statement as Issa-
quah Creamery Company in these items, fifty thou-
sand?

A. I can't tell you what they used. I don't know
anything about it.

Q. All right; what does Mr. Taylor in this state-
ment, 124, carry Issaquah Creamery, reading Issa-
quah Creamery Company Net Worth?

A. \$341,245.10.

Mr. Keesling: We can't hear the witness.

The Witness: Three hundred forty-one thou-
sand——

Mr. Griffin: ——two hundred forty-five dollars.

The Witness: (Continuing) ——two hundred
forty-five dollars and ten cents. [2820]

Q. (By Mr. Griffin): As opposed to your capi-
talization item of \$50,000, is that right?

A. That's right.

Q. Now, on the other hand, what valuation do
you carry Apex Farms in Exhibit A-61?

A. \$110,000.

Q. And Mr. Taylor, Exhibit 124, Apex Farms
is what? A. \$60,749.76.

(Testimony of Hans Forster.)

Mr. Keesling: I can't hear the witness.

Mr. Griffin: \$60,749.76.

Q. (By Mr. Griffin): Is there any real estate included under Exhibit A-61?

A. No, there isn't.

Q. And, in 124, it carries under the reading Real Estate, does it not, \$36,630?

A. Yes, \$36,630.

Q. And also 124 carries contingent liabilities, \$281,280.25? A. That is right.

Q. Have you any idea what that is?

A. No.

Q. Now, did you, from time to time, make up statements for Mr. Taylor like A-61 and from time to [2821] time, receive these white sheets in evidence here, of which 121 is a sample, and which you signed?

The Court: 124?

Mr. Griffin: 124, pardon me.

A. I made those smaller slips up probably three or four times a year, and discussed it with Mr. Taylor. I don't know if he ever took any along or not, to try and make notes from them, but quite often, we discussed them; and Exhibit 124, that is the statement that both the banks received at the end of each year, probably, around the month of March or April. We always had to ask for it.

Mr. Griffin: I think that is all that would be proper redirect on this one item at this time, if the Court please.

(Testimony of Hans Forster.)

The Court: Mr. Moriarty, do you have anything on this portion?

Mr. Moriarty: I will reserve it until later, if it is necessary.

Cross Examination

Q. (By Mr. LeSourd): Mr. Forster, was it important to you that your business be profitable?

A. Yes.

Q. And profit, in general, is the amount [2822] by which receipts exceed expenses; isn't it?

A. Well, profit is what you got over after you pay all of the bills.

Q. I take it your answer is "yes"?

A. Well, that is my explanation. That is what I think of profit. After we pay all the bills, that is supposed to be profit.

Q. I think we will get along very well, Mr. Forster, if you will answer my questions directly.

A. Well, maybe some of them I can't just say "yes" or "no" on.

Q. All right; but on this one, I think you can.

A. Well, if you want to repeat it, go ahead.

Q. Isn't profit in general the amount by which receipts exceed expenses?

A. Well, I would think so.

Q. Now, you stated yesterday that you figured out yourself the annual profit before Mr. Taylor came out?

A. I didn't say that I figured out the annual profit before Mr. Taylor came out.

Q. What did you say?

(Testimony of Hans Forster.)

A. I said that we estimated our monthly profit on a profit and loss statement from our [2823] monthly sales and monthly expenses.

Q. And you estimated that, I think you said, in your own mind?

A. Well, some of it, yes.

Q. And you did that before getting Mr. Taylor's figures, I think you testified, didn't you?

A. Well, I think you make comparison——

Q. (Interposing) Yes, now——

A. (Continuing) ——even after I got Mr. Taylor's figures.

Q. Well, just answer my question.

A. I wouldn't get the sales until Mr. Taylor came out.

Q. Just answer my question. I think you testified yesterday, didn't you, that you made up that in your own mind on your own before comparing it with Mr. Taylor's figures?

A. I don't think I testified to that, no.

Q. Well, what is the fact on that, Mr. Forster?

A. Well, the fact is that we figured our profits on our sales, but we had a certain percentage of gross profit, and when—after Mr. Taylor was out there, he gave me some kind of a rough draft of what we made the previous month. [2824]

Q. Now, in using the word "we," is that the same editorial "we" that means "me"?

You said "we" figured. Are you talking about yourself alone, or was there someone else?

(Testimony of Hans Forster.)

A. I am talking about Mr. Taylor, Mr. Erickson.

Q. Maybe we are talking about two different things. I am talking about your testimony yesterday, Mr. Forster, which, as I recall it, and you correct me if I am wrong, was that you testified you figured out in your own mind what your profit ought to be before you compared and received Mr. Taylor's figures, and you were fairly close, most of the time?

A. As far as I know, I testified yesterday——

Q. (Interposing) First, before saying that, will you tell me whether what I said was right or wrong?

I am asking you if that is a fair substance of your testimony?

A. I told you I had a rough—could get a rough idea of what the profits should be after we got the sales, and after we got the expenses.

Q. And that was done in your own mind, I think you said?

A. That is right, after I had the sales. [2825]

Unless I had sales and expenses, I couldn't do any work on that.

Q. And you compared that with Mr. Taylor's figures when you got them and it was fairly close; is that correct?

A. Sometimes it was close, and sometimes it was off. After he gave us the rough draft that Saturday afternoon, before he made it up, it changed sometimes as much as ten thousand dollars between what

(Testimony of Hans Forster.)

his estimate was at that time, the rough drafts and final statement.

The final statement he gave me probably a week later that he has mailed out.

Q. I want to get at just what figures you took into consideration when you made up your own profit and loss statement in your own mind; what factors did you consider?

A. Well, we figured on the—we figured the sales and expenses.

Q. All right; your sales and expenses. Anything else?

A. Well, the labor cost and figured our purchases.

Q. Sales, expenses, labor cost and purchases; anything else? [2826] A. No.

Q. By "expenses," you mean something different than labor cost and purchases?

A. Well, the odds and ends of the expenses.

Q. You mean by that the office overhead and accounting expense and bookkeeping?

A. Well, of course, the office expenses was part of the labor.

Q. And expense would include general overhead, too?

A. The only thing I could do is to go ahead and make comparison with the month before, the statement that Mr. Taylor gave me the month before.

Q. Mr. Forster, are you answering a question of mine, or making a speech to the Jury?

(Testimony of Hans Forster.)

Mr. Griffin: Object to the form of the question.

Mr. Le Sourd: I think I have the right to have the witness sometime answer my question.

The Witness: I think the Jury ought to know.

The Court: Just a moment, please.

Mr. Reporter, read the question.

(Whereupon, the following was read by the Reporter:)

“Q. And expenses would include general [2827] overhead, too?

“A. The only thing I could do is to go ahead and make comparison with the month before, the statement that Mr. Taylor gave me the month before.

“Q. Mr. Forster, are you answering a question of mine, or making a speech to the Jury?”

A. Well, do I have to look at you, or should I look to the Jury, or which way? If you **start to** criticize me, I want to know what I am supposed to do.

The Court: You may answer. Ordinarily, you speak to the Jury. If Mr. LeSourd wants you to do otherwise, and so indicates, you may.

The Witness: Well, somebody has to tell me. I don't know which way to look now. Yes?

The Court: You can answer your questions to the Jury.

Mr. Le Sourd: You can look at the Jury and answer my question, Mr. Forster.

A. Well, from one month to another, we had **to**

(Testimony of Hans Forster.)

make comparison with monthly statements that we got before.

Q. (By Mr. LeSourd): Now, just a moment. Again, I ask a simple [2828] question, and I would like an answer to it.

Mr. Le Sourd: I ask the reporter to read it.

The Court: The same question just read?

Mr. Le Sourd: The same question just read.

The Court: Mr. Reporter, read the question.

Before we read the question, I might say, Mr. Forster, inasmuch as it appears there may be a little controversy in some of these questions, if possible, just listen to the question and answer the question as closely as possible as it is put, and then, if you wish to explain it, or to give a further version, then you may go on and that way, we will avoid some difficulty. Listen to the question and try to answer it as best you can directly, and if it needs an explanation in your mind, you may go ahead and explain.

The Witness: But, your Honor, if I have to give "yes" or "no," then I can't bring my explanation out.

The Court: If you can't give "yes" or "no," state that you can't answer "yes" or "no," and then go ahead. [2829]

The Witness: Thank you.

The Court: Just give the direct answer that you can, and then the explanation, and we will save time.

(Testimony of Hans Forster.)

Mr. Le Sourd: May we have the question read again?

The Court: Yes. Mr. Reporter, read the question.

(Whereupon, the following was read by the reporter.)

“Q. And expenses would include general overhead, too?” A. I think so, yes.

Q. (By Mr. LeSourd): Where did you get the figure for purchases when you made up these calculations?

A. The figures for the purchases came from Mr. Erickson.

Q. Did you ask Mr. Erickson for them; did you?

A. No, he just, like I mentioned before—Mr. Erickson made up some kind of a rough draft on a piece of paper from the sales and from the expenses and from the month before, and after Taylor went over the books and he gave me the figures, we go ahead and [2830] make the comparison of it and that is the time we compared the sales of the previous month that he made the statement for with the sales of the month before with the expenses of the month before.

For instance, if he came out the latter part of March to make up February's statement, then we would take the sales for the month of February and the expenses for the month of February and the purchases, and make comparison with the month of January to see just how far we was along on

(Testimony of Hans Forster.)

it, how close we was to the actual figures on the profit and loss statement.

Q. Mr. Forster, I am asking you about the statement that you made up yourself?

A. I didn't make up any statement.

Q. You didn't make up any statement?

A. No, I had it in my mind.

Q. You made it up in your mind?

A. That is right; never wrote anything down.

Q. I am asking you about the statement you made up in your mind for the immediate preceding month, which you testified yesterday you then compared with Mr. Taylor's figures.

Now, where did you get the figure for purchases that you used in making that mental calculation?

A. It was the figures that Mr. Taylor gave me of the sales and percentagewise. In other words, our percentage wouldn't vary between a quarter of one percent from one month to another, unless there was a difference in labor, after a new labor contract came along, or the raise in price of milk, but as a whole, if there was nothing that changed that figure, our margin was very, very close, and it was very even.

Q. I am a little confused now. First, you say Mr. Erickson and then Mr. Taylor. Where did you get the figures?

Mr. Griffin: Just a moment, because we may all be confused. The question was about purchases, and he answered as to sales, so that I think you should define which one you are asking for.

(Testimony of Hans Forster.)

Mr. Le Sourd: I am asking about purchases.

Mr. Griffin: And so that we have that, purchases by Issaquah or Alpine?

Mr. Le Sourd: Well, whatever company he is making up a profit and loss statement for in his mind.

Q. (By Mr. LeSourd continuing): You did it for both companies, did you? [2832]

A. I would sit down with Mr. Taylor in my office. That is when we make comparison. I didn't make up statements. I knew—after he gave me the actual figures, that is when I tried to figure out in my mind just about how much the profit would be, or loss; either way.

Q. Both companies?

A. Well, as far as I know, Mr. Taylor made out, up at Issaquah, Issaquah Creamery Company and Alpine Dairy and Alpine Ice Cream Company. He worked from the books at Issaquah when he came up.

Q. Then I take it your answer is "yes" to my last question: to both companies?

A. Well, all three of them.

Q. All three of them? A. Yes.

Q. Take one—Issaquah. Did you—I take it your testimony is now that you got that not from Erickson but from Taylor?

A. I think Taylor—Erickson gave Taylor the figures. That is the reason he came out.

Q. Yes, Erickson gave Taylor the figures, and

(Testimony of Hans Forster.)

you got them before he came out or after he came out?

A. It all depends; I suppose I could have gotten them, if I wanted them, from Erickson. [2833]

Q. You sometimes did, didn't you?

A. I think most of the time that Erickson made some kind of a rough guess in the monthly situation from the month before, and he wouldn't bring it out until Taylor came up with his figures and we made the comparison.

Q. In other words, Mr. Erickson made out a little profit and loss statement himself before Taylor got out there?

A. No, he didn't make out a profit and loss statement. He just took those figures that I mentioned. Anyway, that is how he told me, and he made some rough guess.

Q. He made some rough guess as to the profits?

A. That is right; profit or loss; either way.

Q. And then he went over that with you?

A. He went over it with Mr. Taylor and myself.

Q. Did he go over it with you before Mr. Taylor came out?

A. He maybe did, once or twice a year; maybe not that much. We just talked about it after Mr. Taylor came out with his rough figures before he went [2834] to Seattle and finished it up and sent me the statement.

Q. So that you had three calculations of the profit, one by Mr. Erickson, one in your own mind, and one by Mr. Taylor; is that your testimony?

(Testimony of Hans Forster.)

A. I don't know if you can call that a calculation. I think I knew what I was doing. I knew what my buying price was, and my selling price, and I knew what my labor cost was. I knew what I paid the people, and I knew what my sales was. In my mind, I made out my rough figures on the deal.

Q. Now, I still haven't got a final answer on whether you got the purchase figure from Mr. Erickson or Mr. Taylor. Will you clear it up?

A. It all depends on which one I ask. Either one gave it to me. I don't know which month or year. This is 15 or 20 years you are talking about. This didn't happen every month.

Q. Then sometimes you got the figures from Mr. Erickson and sometimes from Mr. Taylor?

A. I guess I could have gotten them from either one of them.

Q. You say you could have; did you?

A. I probably did at times.

Q. By "probably did," you mean you did; isn't that [2835] right? A. Well——

Q. (Interposing) I am just trying to get your testimony, Mr. Forster.

A. That is right; and I am trying to give you a fair answer.

Mr. Keesling: May I ask if counsel would indicate which company?

Mr. Le Sourd: We are talking about Issaquah Creamery for the time being.

Q. (By Mr. LeSourd): Where did you get

(Testimony of Hans Forster.)

your figure for the labor cost for the month in making this calculation?

A. From the same source. They are the only source that had it, Mr. Taylor and Mr. Erickson.

Q. Where did you get your figure for expenses?

A. I didn't—the sales figures, total amount of expenses we had, which included labor and which included the buying of milk and the buying of boxes and any other purchases, that is where the percentage—that is the way the percentage worked out.

Q. Where did you get your sales figure?

A. From either one of those two fellows, [2836] whenever I asked them.

Q. If the expenses in a given month or a given year, Mr. Forster, were too high, you wouldn't make any profit, would you?

A. No, if the expenses were higher than the receipts I don't suppose there was any money left to make a profit.

Q. In other words, to make a profit, you have got to keep your expenses down; isn't that right?

A. That is correct.

Q. When you took into consideration the expenses and——

Mr. Le Sourd: Strike that.

Q. (By Mr. LeSourd continuing): The office cost, the bookkeeping cost, and accounting cost, was a part of that expense, wasn't it?

A. That is right.

(Testimony of Hans Forster.)

Q. You also had plant expense and sales expense, didn't you? A. Yes.

Q. Plant expense and sales expense are productive of income, aren't they?

A. What is that term again? I didn't—

Q. (Interposing) The expenses which you had in [2837] your plant is for the production of your goods, isn't it?

A. That is right, for the manufacture of the goods.

Q. And expenses for sales is for the selling of the goods? A. That is correct, yes.

Q. And so those two are productive of income; they bring about the income of your company?

A. Well, they bring about expenses of the company; that is what you mean?

Q. And through those expenses, you are able to produce income, is that right?

A. I would think so, yes.

Q. But your office expense is an overhead, and not productive, isn't that right?

A. I wouldn't know what the difference between the two is. It is part of your general make-up of a business, I would say. I wouldn't know why one is productive, and one isn't.

Q. Your testimony is that they are all expenses of the business?

A. I think it takes all of those things to make a business up and to run it.

Q. Were you interested in how much your book-keeping [2838] and accounting cost?

(Testimony of Hans Forster.)

A. I was interested in all my costs, buying, or labor cost, or office cost.

Q. The cost of bookkeeping and accounting consists largely of salary, doesn't it?

A. Well, so does sales, so does any of the other items. I don't know what—what the difference would be between—

Q. (Interposing) Most of the bookkeeping and accounting expense was what you had to pay to the employees monthly in monthly work, wasn't it?

A. That is right, yes.

Q. Were you interested in how much you had to pay in salary and fees for your bookkeeping and accounting?

A. I was interested in all my expenses, not only on that one; I was interested in the bookkeeping part and just like I was with the rest of the labor.

Q. You testified, I believe, Mr. Forster, that you had taken over a succession of failing businesses and made them pay?

A. Well, I didn't take any of them over and made them pay on the original—on the original place. It either went in the hands of receivers and then [2839] all we did was to move the routes from the former location. I didn't go in and, for instance, take over the Melrose Dairy at Ballard and run it at the same spot. The only way I could make anything out of it was to buy the route and trucks and some of the equipment and the good will of the dairy, of the customer, and move it to the location to increase my volume. I didn't make the

(Testimony of Hans Forster.)

individual dairy pay under the same—on the same location.

Q. You consolidated them into one operation and made them profitable, isn't that right?

A. That is right, yes.

Q. Now, not only did you make this consolidation of these failing businesses pay, but in doing so, you were able to make a larger margin of profit yourself than your competing dairies here in Seattle, weren't you?

A. Well, we were just a small set-up to start out with.

Q. Well, now, answer my question.

Mr. Griffin: I object to it, if the Court please.

A. Well, you——

Mr. Griffin: Just a moment. I object to the form. There is nothing to show that this witness knew [2840] how much the other dairies were making.

Mr. Le Sourd: Yes, there is testimony in this case——

The Court: (Interposing) Mr. Reporter, you will read the question, and then the witness may answer it, if he is able to.

(Whereupon, the following was read by the reporter.)

“Q. Now, not only did you make this consolidation of these failing businesses pay, but in doing so, you were able to make a larger margin of profit yourself than your competing dairies here in Seattle, weren't you?”

(Testimony of Hans Forster.)

A. Well, there is nobody—none of my competitors, Mr. LeSourd, ever told me how much money they were making, if that is what you mean. I couldn't tell you. I seen some financial statement in some of the magazines of, for instance, Borden's, and the National Dairies, and Arden Farms of returns of $21\frac{1}{4}$ to $21\frac{1}{2}$ per cent and from the gross sales, I figured when we got close to that, we was doing as good as anyone else.

I don't know what their actual profit was [2841] at the end of the year because competitors never work that close to try to let us know how much money they were making.

Q. (By Mr. LeSourd): Didn't you testify, Mr. Forster, that in January, 1950, you complained to Mr. Taylor about the profit he showed because Kristoferson hadn't made anywhere near that margin of profit?

A. August Kristoferson never told me how much money he was making.

Q. Didn't you complain to Taylor on that basis?

A. I told him that the profit was out of line percentagewise, and he had better go and check it over. I didn't mention Kristoferson or any one of my competitors. I was never that close that they came and told me.

Q. Haven't you mentioned that in testimony here or in your statements to the agents in this case?

A. Not as far as I know.

Q. Not as far as you know?

A. No.

(Testimony of Hans Forster.)

Q. But your margin of profit was in line with the national average, or thereabouts? [2842]

A. Well, I think sometimes it was a little bit over, and maybe, at times, it was a little bit under.

Q. Well, the sales price of milk was about the same for all the dairies, wasn't it?—milk and your other products?

A. Well, I would say "yes." I think competitive wise there is some difference, between different dairies; some of them are probably getting a higher price for some of the products, and some a lower price. It is not a uniform price.

Q. But substantially the same?

A. Well, when you start to get into volumes where you start to put out probably 50,000 quarts a day, a quarter of a cent a quart means quite a difference. So, "substantially," I don't know what you mean. If a quarter of a cent is substantially, or one-tenth of a cent——

Q. Was one dairy selling milk for a quarter of a cent more a quart than others?

A. I think some dairies sell lower by probably one-half cent less than others.

Q. Were you selling milk for more or less than your major competitors?

A. You mean for more money? [2843]

Q. For more money or less money?

A. I wouldn't know, if I would have got more money for it, I probably wouldn't hold the business, or I wouldn't sell anybody.

(Testimony of Hans Forster.)

Q. And the prices paid to farmers for milk were about the same for all dairies, weren't they?

A. Well, I think it is today. I don't think it was so until finally the producers got the Federal Milk Marketing Order in this area. I think there was a wide difference, what some of the dairies got milk for and what some of the others paid.

Q. During the years we are talking about, you were buying largely from cooperatives?

A. No, I think we bought—I think the percentage from the Cooperatives was 60 percent and Independents 40 percent, but some dairies in this town bought 100 percent Independent and didn't buy any from the Cooperatives and some dairies, again bought 100 percent from the Cooperatives and didn't buy any Independent milk, and there was quite a large differential in the final price that it cost the dairies to try to put this milk into the bottle, and that is what brought on the Federal Milk Marketing Order.

That is when the Federal Government stepped in [2844] at the request of the producers.

Q. Were you able to buy milk then at a cost less than the other dairies?

A. Well, I was buying 40 percent Independent. Pretty close to 50 percent. Half and half. I probably was one of them that paid a medium price. I probably didn't pay as high as some of them did, and I know I didn't get it as cheap as some of them did.

Q. Then I take it that from that, am I right in

(Testimony of Hans Forster.)

saying that probably the major factor in your making a profit was your ability to hold down cost of operation?

A. Well, I really feel, Mr. LeSourd, that that is essential in any business of trying to hold down your cost. That is what makes operations click.

Q. Then I take it the answer is "yes" to my question?

A. Well, I would think so, yes.

Q. Now, in attempting to hold down your cost, Mr. Forster, did you use a budget for your various departments and companies? A. No.

Q. Your method then was to retain to yourself the [2845] making of final decisions as to any substantial increase of expenditures, wasn't it?

A. Well, just expenditures: in what? You mean in salary?

Q. Any substantial increase in expenditures or salaries for operation?

A. I didn't make all the decisions myself.

Q. Wasn't it the way that you kept down your cost, the retaining to yourself of the final approval of all substantial increases of expenditures of your company?

A. Well, my final approval, and the recommendation of the people that worked with me, and worked under me.

Q. Yes, but your final approval was necessary?

A. Well, I don't think anybody made any raises, or salary raises, unless they asked me about it, as long as I owned the business.

(Testimony of Hans Forster.)

Q. Take Ribary, for instance; you fixed his salary?
A. That is right.

Q. And if he wanted an increase, you passed on the increase?

A. Either that, or let him go. It depends. He was [2846] a free agent. If he wanted some more money or had an opportunity to go some place else; if I figured he was worth more money to me, I paid more. If I felt I could get along without the person and couldn't pay more, I told him I was sorry, that I felt I could hire that caliber man, or whoever he was, on a certain type basis.

Q. You paid Mr. Ribary a bonus, didn't you?

A. That is right.

Q. You paid that out of Account 198?

Mr. Griffin: Objected to as immaterial, if the Court please. Not proper cross-examination.

Mr. Le Sourd: It is material. It goes to the method by which he handled his salaries and expenses, and the relevancy will appear within a question or two.

The Court: Objection overruled.

A. I don't know. I probably paid him out of either my savings account at Issaquah, or paid him from the savings account at Peoples Bank. I couldn't tell you.

Q. (By Mr. LeSourd): And your purpose in so doing was not to put it on the payroll because all the other employes might learn of it; isn't that right? [2847]
A. Well, I think——

(Testimony of Hans Forster.)

Mr. Griffin: (Interposing) Isn't that material, if the Court please?

Mr. Le Sourd: It is very material.

The Court: Objection overruled.

Mr. Griffin: Not proper cross-examination.

The Court: Objection overruled.

Mr. Le Sourd: I didn't get the answer.

The Witness: Give me the question again.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. (Continuing) Well, I don't know. Probably that was one of the reasons, but definitely there is another one—that Ribary didn't belong to the Union. He didn't—he had to take a withdrawal when he got to be route superintendent, and he worked ten, eleven, or twelve hours a day, sometimes seven days a week, and in order to go ahead and make him feel that I appreciated his work, I gave him a bonus, and that was what that was, a bonus payment.

Q. If other employes heard about it, they might want to get in, too?

Mr. Griffin: Objected to as immaterial. [2848]

The Court: Objection sustained.

Mr. Le Sourd: It is four o'clock, if your Honor please.

The Court: Ladies and Gentlemen of the Jury: We will now recess until tomorrow morning.

The Court calls your attention to the admonition given on these similar occasions, and asks that you

(Testimony of Hans Forster.)

heed the admonition on this occasion. You may now be excused until ten o'clock tomorrow morning.

(Whereupon, the Jury retired from the courtroom.)

The Court: You may step down, Mr. Forster.

The Witness: Thank you.

(Whereupon, the witness withdrew from the witness chair.)

The Court: It is stipulated the Jury have left the courtroom?

Mr. Moriarty: Yes, your Honor.

The Court: I will hear briefly from counsel on the issue as indicated at noontime.

Mr. Le Sourd: Do you want to hear from me first, your Honor?

The Court: Yes. You have an appointment at 4:15? [2849]

Mr. Le Sourd: I have.

The Court: All right; I will hear you very briefly.

I have read the memorandum. If there is anything you wish to add to it——

Mr. Le Sourd: (Interposing) No, there is not, your Honor, anything that I wish to add.

Mr. Keesling: If I may interrupt just a moment. This doesn't directly concern Mr. Erickson, and he would like to leave.

The Court: You desire to leave, Mr. Erickson?

Defendant Erickson: Yes.

The Court: Any objection to Mr. Erickson being excused?

Mr. Keesling: I will be here in his absence.

Mr. Moriarty: No objection.

The Court: All right, you may be excused, Mr. Erickson.

(Whereupon, Defendant Erickson retired from the courtroom.)

Mr. Le Sourd: I merely want to say this, your Honor: As the evidence unfolded in this case, it has become increasingly apparent that the theory of the defense of Mr. Forster is exactly what we anticipated [2850] all along. It develops that Mr. Forster testifies that he had discussed or relied upon Mr. Taylor as to every single item that has come up through all these years.

Now, his credibility is a very important thing in this case on that subject, as far as the Defendant Taylor goes.

We have outlined the evidence that we expect to establish here. There is no need of my going over it at this time, and we feel that under the decisions, that that evidence is relevant and material, because it goes to indicate that the defense thus presented, and Mr. Forster's position, and the position of the attorneys who have and are representing him, was not taken in good faith. We feel that that can be inferred from this evidence, and we feel that we are, under the decisions, entitled to show that as affecting his credibility.

The Court: Mr. LeSourd, I haven't read all the cases you cited. Those I have read don't go as far as you. The theory may be the same, but are there

any of those cases that you contend—that you believe support your theory insofar as—in somewhat similar circumstances?

Mr. Le Sourd: I might say, your Honor, [2851] this is a very unusual set of circumstances that we have here, and to find a similar case, would be almost impossible, and not to be expected, and I have not found any.

The Court: Those I checked are not similar.

Mr. Le Sourd: No. But the general theory of the law is an old theory. Wigmore discusses it at great length, and the general theory is that one is entitled to show any facts occurring before trial with regard to the conduct of the parties and the conduct of their attorneys that the parties are connected with, and the logical inference would be that they had a consciousness that their position was not well taken.

All that would indicate a weakness of that position. We think that that inference can be drawn from this evidence, and that it is entirely relevant and proper in this case, because of it.

Mr. Griffin: I just want to ask a question:

Do I understand the argument to be that the consciousness of counsel defending Mr. Forster is not well taken?

Mr. Le Sourd: No.

If Mr. Griffin desires an answer to [2852] that: the position simply is that the attempt, which is obvious in this case, by Mr. Forster to put blame on Mr. Taylor for all these things is the position taken

by Mr. Forster in this case, and we believe that the activities of Mr. Forster prior to trial and the activities of his then attorney prior to trial, with which Mr. Forster was connected, are all relevant as indicating an attempt, a conscious deliberate attempt, right from the beginning, right from at least the day after Mr. Taylor went to McNeil Island, at least from that time, and we think that this evidence indicates a conscious, deliberate attempt to make Mr. Taylor the scapegoat for this thing, and we feel that we are entitled to show this evidence as having a logical inference in that direction, and the whole of it is, we believe, admissible under the theory of these cases.

Mr. Maxwell: If the Court please, the Government objects to this testimony primarily on the ground that it seems the materiality and relevancy of the testimony is almost non-existent. There may be some slight relevancy here with respect to credibility, under Mr. LeSourd's theory, but the Government would take the position that such an issue is more of a collateral issue. The issue of the testimony, perhaps, would be more prejudicial than relevant in that [2853] it is primarily a collateral issue and has no place in this trial.

Mr. Le Sourd: Of course, it is collateral so far as the issue of evasion is concerned.

Mr. Maxwell: Yes, sir; and furthermore, it seems to me it would take quite some time to go into that issue fully. I assume that both Mr. Le Sourd and Mr. Griffin would want to go into the

issue to some extent, and what value and weight the evidence has, I don't know that the time to be taken would be—would warrant it.

The Court: As I understand Mr. Griffin, you contend it is not admissible, but you are not urging objection?

Mr. Griffin: No, I am simply trying to speak to the Court as a lawyer objectively. It seems to me it is collateral. It is one I stated a long time ago that I expected to meet, and for that reason, Mr. Kachlein withdrew as counsel in this case, and as I said in the beginning, it might turn out to be the most important witness in this case, and I state my position as a lawyer, and I think it is collateral, but one I would still like to meet irrespective of the matter of time.

The Court: Of course, credibility is [2854] collateral to the main issue.

Mr. Griffin: I take it this is the credibility of the defense, rather than a credibility of a witness.

The Court: Well, the credibility of both. In other words, one would go to the other, I take it.

Mr. Le Sourd: That is right, your Honor.

The Court: And, of course, what you have—you have circumstances from which Mr. LeSourd contends a reasonable inference may be drawn that the action indicates a weakness in a position and an effort to put the blame on another. In substance, that is your position?

Mr. Le Sourd: That is correct.

The Court: Of course, the admissibility of evi-

dence on that ground must be considered by the Court having in mind the wide scope allowed and, of course, the Court in this case is not unmindful of the motions made on behalf of the Defendant Taylor for severance and the objections made as we proceeded to the nature of the testimony of the other defendant, the defendant Forster, and I believe must necessarily consider all those factors in making a ruling in this case, and the ruling might be different if the circumstances [2855] of the defense in this case were different.

Therefore, I am not going to rule now, but I am inclined to permit it.

Now, just how far it goes is another question. I don't know whether all matters set forth in the memorandum might come in.

Mr. Le Sourd: If the Court please, on that, if there are any matters that your Honor is not going to permit or feels should not be allowed, we would like to know before offering our proof. In general, we will offer this as a part of our own case, rather than by cross-examination.

We may get into some phases of it on cross of Mr. Forster, but I think it will be material and that, for other reasons, will be relevant; but if there is any part of this that the Court does not feel is admissible, we would like to know it before starting our case, so that we can plan our case accordingly, and then, of course, make the offers of proof that we want to make on it.

The Court: I might say this: in the event this

comes in, of course, Mr. Forster would be allowed to meet it.

Mr. Le Sourd: Of course.

Mr. Griffin: That is what I wanted to be [2856] sure of, because I have heretofore let evidence go in at various times, in other lawsuits, as well, and been met by your Honor's rule that I should have spoken and it didn't open the matter, and I don't want to be in the position of standing where I am now and being met with that.

The Court: I would definitely feel that in this type of case, or in this type of a situation, where you have more or less defendants in adversary positions, particularly that if that testimony comes in, that the defendant involved could meet it.

Mr. Le Sourd: We would have no objection to that, your Honor. We have these facts, which have come to our attention, and we felt it was our duty to present them on behalf of our client. If there is an explanation, we would be glad to hear it, also.

The Court: Does the Government have anything further?

I don't know just how the order of proof would come. I think that is something we will have to meet as we proceed.

Mr. Griffin: I have just this one question: In the matter of witnesses, do you know, do you expect to take the day tomorrow in cross-examination? [2857]

Mr. Le Sourd: I rather imagine we would take our day tomorrow.

Mr. Griffin: We have our difficulty, because these witnesses should be on the stand before Mr. Forster so that it is difficult holding them.

The Court: Do you wish——

Mr. Griffin: (Interposing) I think we can have one available, and finish out the day if there should be a short period.

The Court: All right. The Court will bear the situation in mind, and if it is working a hardship on anyone, you may indicate that.

I think this trial will be recessed. We have some other matters. This trial is recessed until 10:00 o'clock.

(Whereupon, at 4:20 o'clock p.m. March 31, 1954, hearing in the within-entitled and numbered cause was continued until 10:00 o'clock a.m. April 1, 1954.) [2858]

* * * * *

HANS FORSTER

upon being recalled as a witness for and on behalf of the Defendant Forster, and having been previously duly sworn, testified as follows:

Cross Examination—(Continued)

Q. (By Mr. LeSourd): Mr. Forster, when we adjourned, we had brought out that salary increases of your personnel were subject to your final approval, and have discussed Mr. Ribary's bonus.

Now, turning to Mr. Simonson. His salary was the subject of agreement between you and him from time to time, was it?

A. That is right, yes.

(Testimony of Hans Forster.)

Q. And when you found that he had increased his salary \$100 to \$500, you talked to him about it and told him that he should either reduce it, or pay you the \$100? A. That is right.

Q. Mr. Erickson had to get your approval, didn't he, for any increases in salary?

A. Yes.

Q. If he wanted to increase any of the salaries of the girls in his office, he had to get [2867] your approval, didn't he? A. That is right.

Q. Now, likewise as to Mr. Taylor, before he could secure more than the fifty dollars a month, he was getting from Issaquah Creamery Company, your approval would be required, wouldn't it?

A. Well, I would—if you just mention Issaquah Creamery Company, he probably would have to talk to me about it, but I know he raised his salary in some of the other corporations without asking me about it.

Q. You are talking about the six hundred dollars that he got from Renton Ice and Ice Cream Company?

A. Well, I think he started out at a lower figure in some of the other places, and increased it without telling me about it. I think—in fact, I know—that he instructed Mr. Erickson to give him fifty dollars a month at Alpine Ice Cream Company, and I didn't know about it until after a couple of months that Mr. Taylor got it.

Q. You didn't discuss with Mr. Taylor the fifty dollars a month from Alpine Ice Cream Company?

(Testimony of Hans Forster.)

A. No. I did after he already had the check. I asked him about it. [2868]

Q. Alpine Ice Cream Company is the same company as Arctic Gardens? A. That is right.

Q. And he was getting fifty dollars a month from Arctic Gardens when it changed its name from Alpine Ice Cream Company?

A. Well, I never knew how much he was getting from Arctic Gardens until this discussion came up here, but I know when he finished up the Arctic Gardens, he was getting fifty dollars a month, and after we got into this, we had a balance left in Arctic Gardens, and he made the check out in the full amount to himself to finish the account.

I don't know if that was for salary, or to clean up the account.

Q. The check was for fifty dollars, wasn't it?

A. No.

Q. Fifty dollars and forty cents, or something like that?

A. I think it was about two hundred. I know it wasn't fifty dollars, because he finished up the account and closed the account, whatever it was. But I know it wasn't fifty dollars.

Q. While we are getting that check register, then you raised some question about him continuing to [2869] receive fifty dollars a month when the name of the corporation was changed to Alpine Ice Cream Company?

A. Never raised any question about it. Mr. Erickson told me Mr. Taylor was getting fifty dol-

(Testimony of Hans Forster.)

lars from Alpine Ice Cream and I asked him about it, and he said that that was what he was getting at Arctic before. There was never any question about his salary any place that I know of, except at Renton for six hundred dollars when he made it out himself.

Q. You felt then that you should ask him about continuing that fifty dollars from Arctic Gardens when it changed its name?

A. I think I should ask about it when he gave instructions to have salary made out to him.

Q. Referring you to Plaintiff's Exhibit 274, Mr. Forster, check register for Arctic Gardens. What do you find to be the final check written by that company? A. \$50.17.

Q. To Mr. Taylor? A. That is right.

Q. Renton Ice and Ice Cream Company, Mr. Forster, I believe you testified——

A. (Interposing) I would like, while you are showing me this, I never looked at this. I just hear he made himself out a final check, but it is under May [2870] 22d. The last check made out to L. Hicks Taylor for \$50.17; and under May 22, L. Hicks Taylor, \$150.

I don't know; maybe he can explain what it is, but to me, for the month of May, he got \$150 and then there was \$50.17 in the bank, so he made himself out a check for the balance.

Q. \$150 was for several months previous, wasn't it?

(Testimony of Hans Forster.)

A. I wouldn't know. I just state he made himself out a check for the balance.

Q. I see. Renton Ice and Ice Cream Company, I believe you testified Mr. Schneider was president and general manager?

A. That is right, yes.

Q. I believe you testified he made his own decisions on running that company, pretty much?

A. Pretty much, yes.

Q. Now, the extra six hundred dollars that Mr. Taylor got in several years there was signed by Mr. Schneider as president and general manager, wasn't it?

A. It was probably by Mr. Taylor as Secretary.

Q. Yes.

A. Secretary and treasurer.

Q. Yes; it took two signatures for that checking account? [2871]

A. That is right.

Q. Mr. Schneider, president and general manager, signed those checks?

A. Correct, and he was the one that told me about it. He said that he didn't like it.

Q. Well, you are the one that said you didn't like it?

A. I didn't like it, either. That is all he talked to me about it.

Q. Did he explain why he paid it, if he didn't like it?

A. He said Hicks Taylor made distribution. He wrote himself out a check for \$600.

Q. Did Mr. Taylor have any stock in Renton

(Testimony of Hans Forster.)

Ice and Ice Cream Company? A. No.

Q. You and Schneider and Baskett were the stockholders?

A. Yes, and Mrs. Lovenger.

Q. The three of you were in control of that company? A. That is right, yes.

Q. Mr. Schneider was president and general manager? A. Yes. [2872]

Q. It is your testimony that he had no control over the checks that he paid for accountant's fees?

A. No, it is not my testimony that he didn't have control over it, but he knew I was a stockholder, and that is the reason he told me about it, and I think he so testified.

Q. When did Mr. Taylor first start receiving \$100 a month from the businesses, Issaquah Creamery Company and Alpine Dairy?

A. I couldn't tell you. I couldn't tell you.

Q. To refresh your recollection, wasn't it prior to 1935?

A. I couldn't tell you, unless I see the records. I can't remember back twenty years. I know for months he, during the tough years, he held back for probably six or eight months or a year's time, when he knew we had some tough struggling, he said, "You might as well go ahead and hold mine back and then later on overlap." That is what happened. He worked very close with us. But when he started on \$100 a month, I couldn't tell you.

Q. This was back in the early 30's when he didn't draw his pay for months at a time?

(Testimony of Hans Forster.)

A. That is right, yes. In fact, during that period, I think he loaned me some money to buy [2873] some ice cream cabinets when I didn't get credit from some of the ice cream cabinet manufacturers.

Q. He actually loaned you money when you were in a tough spot financially?

A. That is right. He loaned me money at Issaquah, and I think at one time when we had a little difficulty at Puyallup Creamery, too, Simonson and Forster.

Q. You recall, don't you, that he was receiving \$100 a month for some years prior to the split-up in 1940; \$100 a month from two businesses, Issaquah Creamery and Alpine Dairy?

A. Well, I can't tell you what date it started at \$50 or \$100, or what the situation was. I couldn't give you the exact date.

Q. Well, \$100 started, didn't it, when Mr. Strack at Peoples Bank came to you and said you were not paying Taylor enough?

A. Well, I don't know. I sure can't recollect that Mr. Strack ever told me, as far as Mr. Taylor is concerned. The last year he was with me or the first year he started, if Mr. Taylor asked me that he had to have more money, I certainly never turned him down. That is the amount he worked for, and that is the amount he got and I don't think anybody had to remind me [2874] through somebody else that I wasn't paying Hicks Taylor enough money. He would have been man enough to tell me himself.

Q. Mr. Forster, would you deny that Mr. Strack

(Testimony of Hans Forster.)

came to you and said that you should pay Mr. Taylor more?

A. I wouldn't deny, because I don't know why Hicks Taylor would have to go to Mr. Strack to remind me I wasn't paying Hicks Taylor enough money.

Q. Didn't Mr. Taylor, back about 1935, go to the Peoples Bank and ask for their support in trying to get you to put on more office help?

A. I wouldn't know if he went to the Peoples Bank to have me put on more office help, because if he wanted more office help, he hired it, himself, Mr. LeSourd. I didn't have anything to do with it. In fact, he set the wages the girls got paid.

Q. Didn't the Peoples Bank make an investigation or recommendation to you that there should be more office help?

A. Well, I sure can't remember it. Maybe they talked it over with Mr. Taylor. They didn't talk it over with me, as far as I recollect. You ask me a question twenty years back, Mr. LeSourd, and it is impossible for me to recollect any conversation.

Q. If you can't remember, just say so.

A. That is right.

Q. I am just trying to get what you do remember, Mr. Forster.

Mr. Taylor's compensation of \$100 a month from these two businesses, Issaquah Creamery Company and Alpine Dairy, didn't change from when it was fixed at that point until you terminated in 1950; isn't that right?

(Testimony of Hans Forster.)

A. It probably didn't. He didn't ask for more money. As far as I was concerned, he was perfectly happy.

Q. In all those years, it is your testimony, is it, that he never asked you for more money?

A. That is right.

Q. Was there a conversation with Mr. Taylor with regard to this matter at the time the two businesses were divided in 1940?

A. About the—conversation about what?

Q. About his compensation?

A. I sure can't recollect. The businesses, when it was divided, was, as far as I knew, it was just so far as the books was concerned. He had the same office help at the Alpine Dairy as he had before it was divided on the books as he did afterwards.
[2876]

I don't recall of any conversation.

Q. You didn't—you don't recall that Mr. Taylor came to you at that time and said dividing this up into two separate entities greatly increased the accounting work, and that he couldn't do it for the amount you were paying him?

A. Well, by that time, Mr. Taylor was associated with me, and accountant for me for ten years, and if Mr. Taylor wanted more money—

Q. (Interposing) Just a moment. Answer my question, first.

A. (Continuing) —he would have got it. I don't remember any conversation in 1940.

Q. All right, you don't remember, then?

(Testimony of Hans Forster.)

A. That is right.

Q. And you don't—do you remember that you answered him by saying that Mr. Erickson would take over a lot of the work out there and thus relieve Mr. Taylor so that he could continue at the same?

A. Well, if anybody said about taking over more work, Mr. Erickson taking over more work, it was Mr. Taylor that said it, because he knew how capable or what Mr. Erickson was capable of doing. I didn't have the slightest idea which part of the books he could keep and which he couldn't. I am sure [2877] I didn't add any extra work onto Mr. Erickson. I didn't have anything to do with the division of the work in any one of the plants, so far as Mr. Erickson was concerned.

Mr. Keesling: If the Court please, could I have the date of the conversation?

Mr. Le Sourd: It was sometime in 1940. That is as close as I can make it.

Mr. Keesling: I object only——

The Court: (Interposing) That was at the time of the division?

Mr. Le Sourd: Yes, I can fix it as of the time of the division.

Mr. Keesling: I would object only from the standpoint of opening it up prior to the Indictment years. If it relates to something in the Indictment years, I have no objection. If it goes back to 1940 and doesn't relate to anything, I would object to that.

(Testimony of Hans Forster.)

The Court: Objection overruled.

Q. (By Mr. Le Sourd): What was the size of the two businesses, Issaquah Creamery Company and Alpine Dairy, back in the thirties, Mr. Forster?

A. Well, it was quite a bit smaller in the [2878] thirties than it was in the forties. I would say probably in the middle thirties, it was probably half of the size of the middle forties, maybe fifty per cent less. I couldn't tell you unless I saw the sales figures.

I think in 1934 we had about fifteen or sixteen routes at the Alpine Dairy, and probably in 1945, we had probably around 50.

Q. In the 1945 to 1949 period under sales the Issaquah and Alpine together ran five or six million dollars a year, didn't they?

A. I think they run that much. I couldn't tell you as to 1945, but I think all the enterprises together, when I finally had to sell out, amounted to around eight and one-half million dollars, but that included Conway and Finstad and Utgard.

Q. I am asking about Issaquah and Alpine.

A. I wouldn't think so. Of course, the sales had a lot to do——

Q. (Interposing) Didn't you testify previously on direct that the sales at Alpine were around three million in that period, and the sales at Issaquah were slightly less than that?

A. I think I mentioned that it was during the period that I sold out. [2879]

Q. Yes, 1949.

(Testimony of Hans Forster.)

A. But before you asked me a question in 1945, and, you see, the price has a lot to do for it. If milk sells for 22 cents a quart or 18 cents a quart, you might have the same sales, but the dollar volume is up, and butter at 75 cents or 60 cents a pound has a great deal to do with increase in sales.

Actual work doesn't increase because you get more for your product.

Q. Your testimony is then that in the 1945 to 1949 period, the size of these two businesses was about double what it was in the middle 1930's?

A. That is right; I think so.

Q. Did it occur to you at any time during this period that the accounting for these two businesses might be getting more difficult and time-consuming?

A. Well, I—as far as time-consuming and more difficult, I wouldn't know. Mr. Taylor at any time never, in all those years he was ever associated with me, ever complained on the deal that he wasn't getting enough money, or too much work. In fact, he told me many, many times that, "As far as you are concerned, Hans—" when I call him up and try to tell him "I am sorry I have to call you on this," he said, "As far as you are concerned, you are No. 1. I will drop anything [2880] else in order to go ahead and help you on the different deals with O.P.A." And any time I needed it. So that certainly didn't show that he at any time felt that he was underpaid or wasn't satisfied with the arrangement.

So, I don't know, what are you driving at; and there is another question brings that on. In 1937 I

(Testimony of Hans Forster.)

talked to Mr. Panks, who was office manager at Kenworthy Milling Company in Tacoma, and at that time, Kenworthy Milling Company was going into the hands of the receiver and Mr. Panks was office manager. I knew him for quite a few years and I got acquainted with him running into a visit with farmers up in Snoqualmie and Issaquah Valley with the farmers, and he collected the bills, and I tried to get the milk and he talked to me at Alpine Dairy in 1937, at the Rainier Plant, and he said the Kenworthy Milling was going into receivership——

Q. (Interposing) Is this still answering my question, Mr. Forster?

A. Yes, I think it does.

The Court: It seems we are going rather far——

Mr. Griffin: (Interposing) It is going into detail, but he can get right down to it. I know he is coming down to the point of referring this man to Taylor [2881] for a position.

The Court: I think we are taking a little too much time, Mr. Forster. If we can get these questions answered directly at first, and then get an explanation, and try and keep it briefer.

The Witness: Well, Mr. LeSourd——

The Court: I will ask the Reporter to read the question.

(Whereupon, the following was read by the reporter:

“Q. Did it occur to you at any time during this period that the accounting for these two businesses

(Testimony of Hans Forster.)

might be getting more difficult and time consuming?"

A. (Continuing) Well——

The Court: You can give the answer.

A. (Continuing) Yes, I realized that.

Q. (By Mr. Le Sourd): All right.

A. Well, you——

The Witness: I like to really explain.

The Court: Is there some more? You may proceed.

A. (Continuing) And so Mr. Panks told me he wanted to change employment and I told him that Mr. Taylor [2882] was coming out to Issaquah on the last Saturday of that month, and for him to come up there, and I was sure that Mr. Taylor would be glad to interview him, and Mr. Panks came up and met Mr. Taylor and told him what his capabilities was, and he was office manager, and Mr. Taylor told him that as far as offices was concerned, it was in good order and he didn't need any personnel like Mr. Panks.

Q. (By Mr. Le Sourd): Did you send applicants for employment frequently to Mr. Taylor and tell him to give them the easy brush-off?

A. Well, I guess he did, if he didn't want anybody. I sent applicants——

Q. (Interposing) I asked whether you did.

Mr. Griffin: That is a double question. I object to the form. Will you break it down?

Q. (By Mr. Le Sourd continuing): Did you send

(Testimony of Hans Forster.)

applicants for employment to Mr. Taylor from time to time?

A. I sent applicants to Taylor that came to me.

Q. Yes.

A. Because he hired all the office personnel.

Q. He hired all the office personnel?

A. As far as I knew, yes. [2883]

Q. And, from time to time, when sending these applicants, did you ask Mr. Taylor to give them a polite brush?

A. Not with the employment applications, no.

Q. Well, what applications did you ask him to brush off?

A. If some insurance people bothered me too much, or anybody that just insisted, I called Taylor up and said, "This fellow seems to try to give me a rough time. You see what you can do with him." And he would say, "Send him up. I will take care of him."

Q. Were wage rates generally higher in 1949 than they were in the middle thirties?

A. Oh, yes; I would think so.

Q. How much higher?

A. Oh, I know they were higher. I couldn't tell you. Maybe they went up 35 or 40 percent.

Q. And maybe double?

A. That is right. Probably, in some instances, they were double.

Q. But Mr. Taylor's compensation at Issaquah and Alpine never increased in that period?

A. He never asked for it. He was perfectly

(Testimony of Hans Forster.)

happy, as far as I knew. This is the first time I knew he didn't. [2884]

Q. Did it ever occur to you that Mr. Taylor couldn't perform the same services in 1949 without increased compensation?

A. Well, he was his own boss. He should have known how much services he could give, and what the whole bookkeeping deal was all about.

If he couldn't do it, he would have hired people to do it. He never told me. Just fifty dollars, or one hundred dollars. Many times, many times he said I was No. 1, whatever I had. If I needed him, he would drop anything else. So, it didn't look to me like he felt he was underpaid. He wouldn't make concessions and be so free to give me the time if I wanted it.

Q. He was his own boss as far as you were concerned?

A. He was his own boss as far as I was concerned.

Q. You used the word "association" in describing your relations with Mr. Taylor. Do you mean by that that he was his own boss, that he was a part-owner in your business?

A. No, but if he wanted to buy some stock, or be a stockholder, he had many chances, and he always told me it was probably better for him not to be a [2885] stockholder.

Q. He was not a stockholder?

A. He was a secretary-treasurer of all the companies and, as far as I was concerned, he was the

(Testimony of Hans Forster.)

fellow I definitely looked to to try and keep the office personnel and bookkeeping in tip-top shape.

Q. He was not a part-owner in your business, in any of them? A. No.

Q. In other words, he was assoicated in the work, but not in the profits; is that right?

Is that what you mean by association?

A. Well, I told you he was secretary-treasurer of the company, and he was the fellow that handled the books; was my accountant.

Q. And by "association" you don't mean that he was associated in the profits?

A. Not so far as I know. I think he got part of the profits in Renton.

Q. He got part of the profits in Renton?

A. Yes.

Q. By virtue of some stock ownership he held?

A. No, by virtue of making out his own \$600 check, besides getting \$600 a year compensation going out there one-half day a month. [2886]

Q. I thought Mr. Schneider, general manager, signed that.

A. And so did Mr. Taylor.

Q. Counter-signed it?

A. That is right; two signatures.

Q. You testified Mr. Taylor incorporated Simonson and Forster; what do you mean by that?

A. Well, either incorporated or changed the name from Puyallup Creamery to Simonson and Forster. I really couldn't tell you, but when we—

(Testimony of Hans Forster.)

when Oscar and I took the Puyallup Creamery over, Taylor was along and immediately in there.

Q. What did he do?

A. Well, he handled the books. If he incorporated or not, I couldn't tell you.

Q. Then you don't know that he incorporated Simonson and Forster?

A. Well, if there was any incorporation to be done, he done it.

Q. Did you have an attorney in connection with that incorporation?

A. Not as far as I remember, no.

Q. Then you saved the money you would have paid to an attorney, didn't you?

A. Well, he tried to remind me a few times he [2887] could do as much as an attorney could do and there was no use to spend money to get an attorney in there.

Q. You bought out some milk routes in Ballard prior to 1940, I think you testified?

A. That is right, Melrose Dairy.

Q. And you said Mr. Taylor handled the details? A. Yes.

Q. What did Mr. Taylor do?

A. Well, he checked the Accounts Receivable, so far as I know, and checked how much business there was to be gotten. He worked with Mr. Beckstrom, who—at that time, Beckstrom Brothers—was the owner of the Melrose Dairy, and then he hired the bookkeeper that was out there, Mrs.

(Testimony of Hans Forster.)

Barnes, who was assistant to Mrs. Wilcox after we took the records down to Alpine.

Q. And that was the extent of his services, was it?

A. If I took one of those businesses over, he was in it from the start until the transfer was made. Whatever assistance he needed, if he needed any attorneys, he would call them up and if he could do it alone, he did it himself.

Q. Did you have a lawyer in the acquisition of those Ballard Milk Routes? [2888]

A. I couldn't tell you.

Q. You don't know?

A. No, I don't know.

Q. Did you pay Taylor anything extra for his work on that?

A. I doubt it. He never asked for it.

Q. In 1940, you testified, you bought property from Kristoferson.

A. I don't know if it was in 1940.

Q. Well——

A. (Interposing) I think it was——

Q. (Interposing) 1940, or before?

A. Before 1940, yes.

Q. What did Mr. Taylor do in connection with that matter?

A. Well, I think Mr. Taylor handled the original lease that I made with August Kristoferson, with option of purchase, and he corresponded with Mr. Kristoferson in the purchase of the present Alpine Dairy Plant, and I think Mr. Taylor took

(Testimony of Hans Forster.)

me down to Mutual Savings Bank, somebody that made us a loan on a chattel mortgage or real estate mortgage, in order to make the purchase from Mr. Kristoferson.

Q. Did you have an attorney in that transaction? [2889]

A. I doubt it. I think Mr. Taylor handled it.

Q. You saved the cost of an attorney?

A. That is right. He maybe called an attorney up, which he frequently done, and they send us a bill. He had his own—he had his own prerogative about it if he wanted to call an attorney, he would, and if he figured he could do it without an attorney, he went ahead and done it. He had free access to try and get some legal advice if he did it.

Q. You don't recall paying an attorney in that transaction, do you?

A. I couldn't tell you. It is 20 years ago, unless you have any way to check it.

Q. Did you pay Mr. Taylor anything additional for his services?

A. I wouldn't know. I couldn't tell you.

Q. You don't remember that you did?

A. No, I don't remember that I did, and I don't remember that I didn't. I just don't know. It is close to twenty years ago now. Either the middle thirties or late thirties when that happened.

Q. Well, in 1940, or thereabouts, Alpine Dairy was split off from Issaquah Creamery Company, you said? A. That is right.

(Testimony of Hans Forster.)

Q. And made into a sole proprietorship of yours? [2890]

A. Yes, sir.

Q. Mr. Beadon Hall, the banker, talked to you for some time before about this matter, didn't he?

A. Well, before he talked to me, he talked to Mr. Taylor.

Q. I am asking if he talked to you for some time before?

A. Oh, I think he mentioned it to me, that he had some conversation with Mr. Taylor about it.

Q. And that is all that he mentioned to you?

A. Well, he thought that it was a good thing.

Q. You also discussed this matter with Mr. Strack and Mr. Donaldson before?

A. I discussed it as far as Mr. Hall approached me and said he was talking to Mr. Taylor on the matter, and he said the next time I was in the Peoples Bank I might tell them about it and give them an idea, and wondered if they had anything against it, or what they thought about it.

Q. And you also discussed it with Mr. H. P. Jones, the attorney, didn't you?

A. Well, I think I probably talked to Mr. Jones after all the arrangements were made by Mr. Taylor and if there was some papers to sign, or whatever the changeover was, that is about the only conversation I had. I wouldn't get into an attorney's [2891] office unless Mr. Taylor would make the appointment when the deal was consummated.

(Testimony of Hans Forster.)

Q. What services did Mr. Taylor perform in connection with this split of the business?

A. I couldn't tell you. He worked it out with Mr. Harry Jones, of Jones and Bronson, and what he did, I couldn't tell you, or how much work it took, or which part he took in it.

Q. Did you pay Mr. Taylor anything additional for this work?

A. I couldn't tell you, unless we have it in the records.

Q. You don't remember of paying him anything additional? A. No, I don't.

Q. About 1944, I believe you said, you bought Daisy Ice Cream Company?

A. I think that is probably the year, yes.

Q. Mr. Taylor had been the accountant, or was the accountant, for the previous owner, Mr. Morris, wasn't he?

A. I think he made out his income tax returns.

Q. It was from Mr. Morris you bought the Daisy Ice Cream Company?

A. That is right, yes. [2892]

Q. Were you represented by a lawyer in that transaction?

A. No, that was represented by Hicks Taylor.

Q. And you paid no attorney's fees in that transaction? A. I guess I didn't.

Q. You were present, were you, when Mr. Taylor discussed with Mr. Rygg, the matter of making up the daily report receipts?

A. Yes, I was there when he told him about

(Testimony of Hans Forster.)

making out the daily reports of the receipts, and told him where to deposit the money.

He brought him some Peoples Bank deposit slips and told him how to get it up there, and how to handle it.

Q. Perhaps you directed Mr. Taylor to give Mr. Rygg this information, didn't you?

A. I don't know who directed who, but Mr. Taylor was there, and he handled all my different bank accounts for different companies, and he is the one that was familiar with it. It wasn't me. I never directed Hicks Taylor to do anything.

Q. Then is it your testimony you never directed him to give this information to Mr. Rygg? [2893]

A. He was there when the transaction was made, and he was in the Daisy Ice Cream office.

Q. Please answer my question now.

Is it, or is it not, your testimony that you directed that; you did or did not?

A. I didn't direct him. I told you I never directed Hicks Taylor to do anything.

Q. And you heard Mr. Rygg's testimony in this case? A. Yes.

Q. Was Mr. Rygg in error in saying that you directed Mr. Taylor to give this information to him?

A. Well, if he made that statement, he probably figured because I was the owner, that I gave Taylor directions, but Taylor worked out the details with him.

(Testimony of Hans Forster.)

Q. And you did think Mr. Rygg was in error in making that statement?

Mr. Griffin: If the Court please, I object to the form of that question, whether the witness ever heard him make such a statement.

The Court: He may answer the question, and give such explanation as you wish.

A. I sat over there when Mr. Rygg testified, and I—if he made that statement, I certainly didn't hear it; but it wasn't so regardless of if he testified [2894] to that effect. It was Taylor that handled—explained it to him and made the set-up for him to deposit the money in Peoples Bank. It wasn't under my direction. He took directions from Taylor.

Q. You said that from then on Mr. Taylor handled it, didn't you?

A. As far as I knew, from that time on Taylor handled Daisy Ice Cream Company and later on, Alpine Ice Cream Company.

Q. And what did Mr. Taylor handle for Daisy Ice Cream Company?

A. Well, he dropped in there once in a while to see if deposits was made right, and he knew of the bank account, and he seen the cancelled checks that was at Issaquah for payment of mix and supplies.

Q. How do you know that?

A. Well, as far as I was concerned, it was part of Alpine Dairy and he was my accountant at Alpine Dairy, and I didn't have any reason to try and question that he didn't.

Q. Then when you just said now he dropped in

(Testimony of Hans Forster.)

there and did all these things, you are assuming he did?

A. I know he dropped in. I don't know why he did. Just to get free ice cream; I am quite sure he [2895] didn't. He talked over the situation.

Q. You heard Mr. Rygg's testimony?

A. That is right.

Q. Didn't Mr. Rygg say he dropped in once in a while to get some ice cream?

A. That is right, yes.

Q. And that he had no connection with the books or accounting after that time, after you bought it out?

Mr. Griffin: Just a moment now. I submit that is not a fair question, because that was not the testimony.

The Court: The Court will sustain the objection.

Mr. LeSourd: Certainly the objection isn't sustained on the ground that that was not the testimony.

The Court: I don't think it was a proper question to put to the witness as to what the testimony was in the case.

Q. (By Mr. LeSourd): From the time you bought out Daisy Ice Cream Company, Mr. Rygg worked under your direction, didn't he?

A. He worked under my direction as far as [2896] making the ice cream was concerned, yes.

Q. He worked under your direction in all of the things?

(Testimony of Hans Forster.)

A. Oh, no, he didn't. I didn't have anything to do with the receipts of it, of the Daisy Ice Cream. I didn't have anything to do with the part of the monthly inventory or charges as far as the ice cream was concerned from a product angle. I didn't have anything to do with the rest of it. That was part of Alpine Dairy and, as far as I knew—in fact, I met Taylor there once in a while.

Q. When did you meet Taylor there?

A. During the period we had it, when we had the plant, I met him in the office there.

Q. How often did you meet him there?

A. Oh, I don't know. Probably a couple or two or three times a year.

Q. And what did you do when you met him?

A. We talked over the general situation of the—of the Daisy Ice Cream plant, of the product.

Q. What did Mr. Taylor do when you met him?

A. Oh, I think he looked at some of the deposits and looked at some of the inventory slips. In fact, I asked him several times to give me a profit [2897] and loss statement of Daisy Ice Cream, and he sort of put me off, and he say, "I try to get it out next month".

Q. Then, Mr. Forster, would you say that Mr. Rygg was incorrect in testifying that Mr. Taylor did not look at the accounts or books or have anything to do with them after you took over?

Mr. Griffin: I object to the form of that question again.

The Court: I think the form isn't proper, Mr.

(Testimony of Hans Forster.)

LeSourd. I think if you qualify it, you can put the question.

Q. (By Mr. LeSourd continuing): Well, as I recollect, Mr. Forster, Mr. Rygg testified that Mr. Taylor had no connection with the books or accounts after you bought it out.

Now, if that were his testimony, would you deny that that was correct; would you say that Mr. Rygg was incorrect in so stating?

A. Well, if he got—I don't know where he got that information from, because, as far as I was concerned, he definitely had something to do with it. He made the original arrangement to make the purchase. He was the one that told me Daisy Ice Cream [2898] is for sale, and he was the one who took over to start out the bank account, and where Rygg got the idea, if that is the way he testified, I wouldn't know.

Mr. Taylor had as much to do with Daisy Ice Cream as Alpine Dairy, or any one of my enterprises.

Q. Do you have a definite recollection in your mind of some meetings with Mr. Taylor at the Daisy Ice Cream Company?

A. I have definite recollection of Mr. Taylor being in the Daisy Ice Cream Company when he was in——

Q. (Interposing) I am asking you——

A. (Continuing): ——in not only once but several times, at least.

Q. And you have a definite recollection in your

(Testimony of Hans Forster.)

mind of Mr. Taylor looking at books and such matters while you were there?

A. That is right; and talking it over about the operation.

Q. And you have recollection that this was sometime subsequent to your acquisition?

A. You mean before?

Q. No, after you bought it out?

A. After I bought it out, yes, definitely.

Q. And prior to the time it became Alpine Ice [2899] Cream Company? A. Yes.

Q. Isn't it true, Mr. Forster, that when you bought out Daisy, Mr. Taylor asked you if he shouldn't continue on with the books and records, and you said "No", that Mr. Erickson would handle it at Issaquah?

A. Of course, that is absurd. That doesn't have anything to do with it. Taylor never asked me the question, and why would I go ahead and keep Daisy Ice Cream out any more than Simonson and Forster, or anything else? He was my accountant. Arctic Gardens, which was a partnership with Brehm, he handled all the stuff.

Q. Taylor's compensation from Daisy stopped when you took over?

A. I don't know what his compensation was from Daisy. So far as I knew, he made out an annual income tax return. That is all that I know about it. Mr. Morris can probably tell you.

Q. He received no compensation from you for Daisy, did he?

(Testimony of Hans Forster.)

A. As far as I was concerned, it was part of Alpine Dairy, at that time, until we took Arctic Gardens and made it into the corporation.

Q. Then, do I take it your answer to my question [2900] is, "Yes, he did not receive any"?

A. I couldn't tell you. He never asked for any.

Q. You don't recall paying him anything for Daisy, do you? A. No, I do not.

Q. You knew that the daily reports from Mr. Rygg at Daisy were being sent directly to Issaquah, didn't you?

A. Yes, I knew they was, but I was under the opinion, until Mr. Rygg testified, that Mr. Taylor always got a copy of that.

Q. You did know they were being sent directly to Issaquah?

A. I knew that Mr. Erickson got it. They came up to Issaquah, yes.

Q. You never received any financial statement from Mr. Taylor for Daisy Ice Cream Company, did you?

A. Well, I never asked him for a financial statement. I asked for a profit and loss, several times.

Q. Did you ever receive a profit and loss?

A. No, he always promised, and never gave it to me, and finally, I said, "If you are so busy on it, why don't you tell Harold how to handle it?"

Q. He gave you profit and loss statements monthly for the companies where he was employed, didn't he? A. That is right.

Q. Mr. Rygg asked you, after you had had this

(Testimony of Hans Forster.)

business for awhile, how it was doing, and you said it was operating in the black; didn't you?

A. I thought it was operating in the black.

Q. How did you know that?

A. Just like I said, when Taylor wouldn't give me a profit and loss statement of the Daisy Ice Cream Company, he had two or three different excuses why he was going to give it to me next month, and next month, and it was probably three or four months finally when I said, "I think I ought to know how that thing is getting along, Hicks." And he said, "I will try and get it out next month." And I said, "Maybe Harold can help you, maybe Harold has some time and how about working with him so that he can give me some rough idea of how we are going on the deal?" And after that, Harold made me out a very rough statement on the profit and loss of the Daisy Ice Cream.

Q. Who did? A. Harold Erickson. [2902]

Q. Erickson? A. Yes.

Q. In 1949, I believe you and Mr. Erickson went down to take an inventory at Daisy, did you?

A. Well, I don't know if it was in 1949. We went down there, yes.

Q. You went down there to make an inventory?

A. Yes. I don't know if Mr. Krumbah was along, too. I am not too sure.

Q. Mr. Taylor was not along, was he?

A. Well, I couldn't tell you he was along. I know Mr. Erickson was there.

(Testimony of Hans Forster.)

Q. You wouldn't testify that Mr. Taylor was there?

A. No, I couldn't. I couldn't testify that he wasn't there, either, though.

Q. Now, I believe you testified that you bought some property in the Denny Regrade District?

A. That is right.

Q. For ten thousand dollars? A. Yes.

Q. Who negotiated and fixed the price that you paid for that?

A. Hicks Taylor.

Q. You didn't make that determination yourself, [2903] did you?

A. Well, he was the one that told me about the deal, and as far as I know, he handled it.

Q. Did you yourself talk to the seller?

A. No; in fact, I don't think—I can't even remember who it was, but I know that Taylor handled the deal.

Q. He did all the negotiating?

A. As far as I know, yes.

Q. He determined what you were going to pay for the property? A. Yes.

Q. You simply took his word for it?

A. That is right.

Q. And paid ten thousand dollars out?

A. That is right.

Q. Did you pay Mr. Taylor anything extra for his services on that?

A. No, of course, not. He is the one that helped me sell it, too.

(Testimony of Hans Forster.)

Q. Yes. He—you sold it to Mr. Morris?

A. That is right.

Q. And you wanted fourteen thousand dollars?

A. That is right.

Q. Mr. Taylor thought he could get you five [2904] hundred dollars more? A. Yes.

Q. And he got you fourteen thousand five hundred? A. I think that is correct.

Q. You made four thousand five hundred dollars on the transaction? A. That is right.

Q. Did you pay Mr. Taylor anything?

A. He never asked me for anything.

Q. In your testimony, you said that if something looked good to you and Hicks, "we bought it." Do you mean Mr. Taylor got an interest in these things you were purchasing? A. No.

Q. You meant that you bought it; you made the profit and Mr. Taylor did the work for no extra pay?

A. Well, either the profit or the loss.

Q. Most of this, though, resulted in profit, didn't it?

A. Well, the one venture of Arctic Gardens showed a heavy loss.

Q.. You acquired some other enterprises, like Meadowland? A. That is right. [2905]

Q. Did Mr. Taylor work on that?

A. Yes, I think he was even an officer of Meadowland. I know he was the accountant.

Q. Did you pay Mr. Taylor anything extra for that?

(Testimony of Hans Forster.)

A. Well, he was accountant up there. I am sure Meadowland paid him.

Q. That was before you bought it out?

A. That is right.

Q. Did he perform services when you bought it out?

A. Yes.

Q. Did you pay him anything extra for those services?

A. I couldn't tell you. Not as far as I know.

Q. And his pay from Meadowland stopped when you bought it out?

A. That is right.

Q. And how about Melrose; did he perform any services when you bought out Melrose?

A. I think you asked me about that. That is the Dairy in Ballard.

Q. Then Green Pastures; was that also a Ballard Dairy?

A. No, that was a jobber there out in Rainier [2906] Valley.

Q. Did Mr. Taylor work on that?

A. Well, he was an accountant for Green Pastures, but on all those deals, he definitely came into the picture when there was something to be bought out, so he definitely did some work on it, of course.

Q. Did you pay him anything extra for that?

A. It was twenty years ago. I don't remember.

Q. You don't remember that you did?

A. If he asked for anything, I would have paid him.

Mr. LeSourd: It is recess time.

The Court: Ladies and Gentlemen of the Jury:

(Testimony of Hans Forster.)

We will now take the mid-morning recess. The Court asks that you pay attention to the admonition given to you on similar occasions. You may now be excused.

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, at 11:01 o'clock a.m. a recess was had in the within-entitled and numbered cause, until 11:14 o'clock a.m. April 1, 1954, at which time, counsel and defendants heretofore noted, being present, the following proceedings were had, to-wit:) [2907]

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor, it is so stipulated.

The Court: You may proceed, Mr. LeSourd.

Q. (By Mr. LeSourd): Mr. Forster, in all of these transactions where you were buying and selling property, and buying businesses and splitting businesses, it is your testimony that Mr. Taylor never asked for any additional compensation?

A. Whenever Mr. Taylor asked me for additional compensation, he got it.

Q. We have gone over these transactions here, a number of them, and your testimony is that he

(Testimony of Hans Forster.)

did not receive additional compensation on them, or you couldn't remember that he did and I come back to my question:

Is it your testimony that he didn't ask for any additional compensation? [2908]

A. Any——

Q. In all these transactions?

A. That is right, yes.

Q. Did it ever occur to you to offer him any additional compensation?

A. Well, I maybe have.

Q. You have offered him?

A. I don't know.

Q. Would you say it had occurred to you to offer him?

A. Well, Mr. LeSourd, I found out from my accountants I paid Mr. Taylor over fifty thousand dollars in those years to handle my different businesses, and now the Government comes along and claims another two and one-half million dollars, and I think he has done enough damage. I think he was overpaid.

Q. Just answer my question, whether it occurred to you to offer him additional compensation.

A. I don't know why it occurred to me or not. I don't know why this line of questioning.

Q. Even when you made four thousand five hundred dollars on that property on Mr. Taylor's advice, it didn't occur to you to offer him anything?

A. Four thousand five hundred dollars was [2909] applied on the note that I owed Mr. Morris

(Testimony of Hans Forster.)

at the Daisy Ice Cream Company. I didn't receive any cash out of it.

Q. You received a credit?

A. I received a credit, yes.

Q. You said that Mr. Taylor drew a will for you?

A. I think he drew the first will we had, yes.

Q. When was that?

A. Oh, I would say probably in the middle thirties.

Q. How long did you have that will in effect?

A. I had it in effect until Mr. McEwen of Jones and Bronson wrote another one.

Q. You had no attorney when you drew this will that you say Mr. Taylor handled?

A. Not as far as I know.

Q. You saved the attorneys' fees?

A. Well, I would think so, unless he talked to somebody about it.

Q. Did you pay Mr. Taylor anything extra for that? A. Not as far as I know.

Q. I think you said Mr. Taylor made out your children's income tax returns? [2910]

A. That is right.

Q. Did he get anything extra for that?

A. Never asked for anything.

Q. You took two trips to Switzerland, I believe, one in 1939 and another in 1947?

A. That is right.

Q. Now, on the 1939 trip, you had Mr. Taylor do some extra work?

(Testimony of Hans Forster.)

A. I believe he was in full charge of it when I was gone. I don't know how much extra work he done on it. I couldn't tell you. I am sure he done some.

Q. You had him as well sign checks at that time while you were gone, didn't you?

A. I think he probably did, yes.

Q. And what else did you have him do while you were gone?

A. Well, he sat in on some of the meetings with the dealers.

Q. Anything else?

A. Well, he had power of attorney to handle the affairs, if anything came along that he had to do.

Q. Was that power of attorney in writing?

A. I think it was. I think he made it up.

Q. You actually signed a written power of attorney? [2911]

A. Yes.

Q. Do you have a copy of it?

A. No. I threw it away after I got back.

Q. You did pay him three hundred dollars extra for this 1939 work, didn't you?

A. I wouldn't know. If that is what you say it is, I probably did.

Q. How long were you gone to Europe in 1939?

A. Probably three months.

Q. Now, in 1947, how long were you in Europe?

A. I would say about six weeks.

Q. And what did Mr.—were you gone only six weeks on that trip?

A. I would say around six weeks, yes.

(Testimony of Hans Forster.)

Q. What did Mr. Taylor do while you were gone that was any different to any other time?

A. Well, he was in full charge of the businesses. If something would have to come to my attention, instead of coming to my attention, it went to Mr. Taylor's attention.

Q. Did he boss Mr. Ribary?

A. Well, he handled everything.

Q. He was in charge—Mr. Taylor was in charge—then, of the production at your plant?

A. Well, he was in charge of the superintendence [2912] if something came along that they needed his advice, they called on him.

Q. Did they call on him?

A. I couldn't tell you.

Q. Did you give him a power of attorney at that time?

A. I am quite sure I did, yes.

Q. Do you remember signing such a document at that time?

A. I am quite positive, yes.

Q. Do you have a copy of it?

A. No.

Q. You paid him nothing extra for that 1947 trip, did you?

A. I wouldn't know.

Q. You wouldn't know?

A. No.

Q. You wouldn't state that you did?

A. No, I wouldn't state that I did, and I couldn't state that I didn't. If he asked me for any extra compensation, I am sure I paid him, but I can't recall if he did or not.

Q. You testified a number of times, I believe,

(Testimony of Hans Forster.)

Mr. Forster, that Mr. Taylor was your financial adviser. [2913]

A. Well,—financial adviser—before I took on any kind of obligation, or made any kind of a deal, I talked it over with Hicks.

Q. Well, now, just what do you mean by “financial advice”?

A. Well, to—I think buying out different dairy businesses, or going into re-selling of the plants, or like when I built Alpine Ice Cream Company plant on Rainier. He was with me when we made arrangements with the banks to try to make the loan. I talked to him before I stored butter in the spring, about how much we probably should store, and how much money we probably would have to borrow. The same way on taking out some life insurance policies, or anything that had anything to do with finances, of borrowing money or loaning money.

Q. In other words, by “financial advice”, you mean that you asked his opinion of the transactions you are entering into?

A. Well, I asked his opinion before I did.

Q. You mentioned butter. Do you consider Mr. Taylor an expert on butter?

A. You don't have to be an expert on butter to buy butter. It was to try to find out how much money we should invest in butter. [2914]

Q. You have to be an expert in butter to buy it with any assurance of financial success, don't you?

(Testimony of Hans Forster.)

A. Well, you take a certain risk. Not later, of course, since the Government protected the price. There is no risk in buying butter and selling it.

Q. Now, the first time that you actually needed financial advice, you went to a bank, didn't you?

A. Well, I think before I went to the bank, I talked to Mr. Taylor.

Q. Well, this was back in 1925 or 1926, something like that, when you went to Mr. Peters in the Snoqualmie Bank?

A. Well, I wasn't—Mr. Taylor wasn't associated with me then.

Q. So that you can't now say that you talked to Mr. Taylor before you went to Mr. Peters, can you?

A. Well, that was at the Falls City Cheese Factory. I told you when Mr. Taylor came into the picture.

Q. Will you please answer my question?

Mr. Griffin: I object to the form of the question. It is argumentative.

The Court: Mr. Reporter, read the question.

(Whereupon, the following was read by the Reporter: "So that you can't now say that you talked to Mr. Taylor before you went to Mr. Peters, can you?")

The Court: Objection sustained.

Q. (By Mr. *Taylor*): You didn't talk to Mr. Taylor before you talked to Mr. Peters, did you?

A. I didn't know Mr. Taylor.

(Testimony of Hans Forster.)

Q. All right; now, Mr. Peters was your financial adviser for many years, wasn't he?

A. No, Mr. Peters was my adviser from 1926, the latter part of 1926, until a little bit of 1927; probably a year and a half, I guess.

Q. And then he was supplanted by another Mr. Peters, wasn't he?

A. Well, they were brothers.

Q. There were others?

A. No, they were brothers.

Q. Brothers? A. That is right.

Q. Well, he and his brother were, either or both of them, were your financial advisers for many years, weren't they? [2916]

A. Well, one of them was at the bank at Snoqualmie, and after I burned out in Falls City, I went to Issaquah, and Hicks Taylor came into the picture at that time.

Q. Is your answer "yes" to my question that they were your financial advisers for many years?

A. Well, the second Mr. Peters was my partner. He owned half of the stock in the bank.

Q. Was he your financial adviser?

A. I would think so. He was not only my adviser, but the one who made the policy.

Q. Then your answer is "yes"?

A. I would think so, yes.

Q. Now, when Mr. Beadon Hall of Peoples Bank took over Mr. Peters' bank, they became your financial advisers, didn't they?

A. Well, they would tell me whether they would

(Testimony of Hans Forster.)

loan me the money or not, but it was Mr. Hicks Taylor who talked to Mr. Hall in the early thirties, like in going over the statement, and he was the adviser with me to the bank.

Q. You say that Mr. Beadon Hall was not your financial adviser?

A. Well, he told me if he would loan me money or not. I don't know if you call it adviser. I think [2917] Mr. Taylor was more advising. The bank either told me whether they would loan or not loan me the money.

Q. You did consult Mr. Hall on financial matters?

A. I consulted him when I wanted a loan.

Q. Is that the only thing you talked to him about?

A. We went over the statements that Hicks Taylor gave me. That is the only reason he would loan me money.

Q. Is that the only thing you talked to him about?

A. Why, I never talked to Mr. Hall about any expansions. I talked to Mr. Hall in the early years just to try to keep things afloat, that I had, but from an expansion angle, it was Hicks Taylor, for close to twenty years, or at least, fifteen or eighteen years that I asked first before I made any kind of a move, and in most instances, we went to the bank and talked.

Q. I gather from that, Mr. Forster, that is your testimony you did not talk to Mr. Beadon Hall

(Testimony of Hans Forster.)

about financial matters, other than borrowing money, is that right?

A. Well, you mention some other financial [2918] matters except borrowing money.

Q. Well, you are the one that used the term "financial advice"; I want to find out what you mean by that.

A. Well, as far as Mr. Hall was concerned, I didn't talk to Mr. Hall about any expansion problems except when I had to borrow some money, I had to explain it to him what I wanted the money for.

Q. You talked to Mr. Hall about dividing your business, didn't you?

A. I talked to Mr. Hall? He talked to me about it after he talked to Mr. Taylor.

Q. You saw Mr. Hall more than once a month in all these years, didn't you?

A. Well, I probably seen Mr. Hall probably more the last ten years than I did before since I got to be a director of the bank.

Q. I am talking about the last ten years.

A. I would think so, yes.

Q. Mr. Donaldson and Mr. Strack were also your financial advisers, weren't they?

A. Well, over the last ten years, the loan limit of the Washington State Bank was twenty-five thousand dollars, until they increased their capital stock, and in the late forties, or middle forties, and then it went [2919] up to fifty, but when you had to purchase butter of probably 125 to 150 thousand

(Testimony of Hans Forster.)

dollars' worth, the Washington State Bank wasn't —couldn't, under the loan limit, loan the money, so I didn't borrow very much money from Mr. Hall, and most of the borrowing was done at Peoples' National Bank with Mr. Strack and Mr. Donaldson and Mr. Green.

Q. Then your answer is "yes", that they were your "financial advisers"?

A. Well, they were the ones that was my bankers. I borrowed the money.

Q. Were they your financial advisers?

A. Well, as far as the advice, before I borrowed the money, how to do it and when to do it and why to do it, that was Hicks Taylor I talked to first, and afterwards, him and I went to the bank and tried to make the loan and tell them why we needed it and what he was going to do. They told us they would or wouldn't or they told us they would give us half or all of it. I don't know which one was the adviser. Hicks Taylor came along with me when the loan was made and the other fellows just made the policy of whether they loaned it to me or not. Like anybody tries to borrow money, they give it or they don't.

Q. Then is your answer that you don't know if [2920] they were your financial advisers?

A. Well, they knew about all my business transactions.

Q. Well, is your answer "Yes, they were your financial advisers;"—"No, they weren't"—or "No, you don't know"?

(Testimony of Hans Forster.)

A. I think they helped in the picture.

Q. Then your answer is "yes"?

A. I don't know why you try to confuse me on this deal, Mr. LeSourd.

Q. I am not trying to confuse you. I am trying to find your answer.

A. I told you by financial adviser, so far as I was concerned, before I went to the bank, my adviser was Hicks Taylor.

Q. I know you said that. I am asking if Mr. Strack and Mr. Donaldson weren't your financial advisers?

A. They told me whether I should go in or not. If I didn't need money, I didn't go to them in asking to try to make any deals.

Q. They told you whether you should go into ventures or shouldn't didn't they?

A. If there was such a thing as trying to borrow money, yes. [2921]

Q. Well, most ventures require some money, don't they? A. That is right.

Q. And how often did you see Mr. Donaldson and Mr. Strack in this period in the last ten years of this period?

A. It was quite frequently.

Q. It was more than once a month on the average, wasn't it?

A. Oh, yes; I think so. Maybe two or three times a month.

Probably just see them sitting at the desk going in to get my balance, or pick up cancelled checks.

(Testimony of Hans Forster.)

Q. So that you were seeing Mr. Beadon Hall more than once a month, and you were seeing Mr. Strack and Hall more than two or three times a month? A. I would think so, yes.

Q. You followed the advice of Peoples Bank on your Alpine Building Account, didn't you?

A. That is right, yes.

Q. You followed the advice on Apex Farms?

A. Well, I—the advice—we went to talk to them and asked if—what they thought about it, Hicks Taylor and I, and they told us to go ahead; [2922] and it was the same way on the building account. They requested us to try to set up a building account.

Q. You consulted the Peoples Bank on the use of Arctic Gardens for the Alpine Ice Cream business, didn't you?

A. Well, you will have to clear that. I don't know just what you mean. Peoples Bank loaned us money on the Arctic Gardens.

Q. Didn't you get the advice of the Peoples Bank, Mr. Donaldson or Mr. Strack, with regard to putting the Alpine Ice Cream business into Arctic Gardens? A. You mean the change?

Q. And putting the business in?

A. No, that was definitely Hicks Taylor's idea. It wasn't Peoples. He probably talked to Peoples Bank about it.

Q. He probably did? A. I think "yes".

Q. But you don't know?

A. I probably was brought into the conversation

(Testimony of Hans Forster.)

but the original idea was Hicks Taylor's, because he kept the corporation books and he knew that Arctic Gardens was being closed out, and that is where the corporation came from, and I am sure he talked [2923] it over with the bankers, and probably before the transaction was made. I am sure they probably talked to me about it, too.

I think he talked to attorneys. I am quite sure that Mr. Grill had something to do with it, or Mr. McEwen of Jones and Bronson.

Q. You met Mr. Wettrick, I believe you said, who is an attorney in this city, back in the middle 1920's?

A. Well, in the late 20's. He was attorney for Mr. Andres, who I bought the cheese factory from.

Q. From that time on, Mr. Wettrick did various legal work for you, didn't he?

A. Mr. Wettrick did some work, yes.

Q. He handled the Renton Ice and Ice Cream corporation, among other things?

A. That is right, yes. He was actually employed by Mr. Schneider.

Q. Mr. Wolfstone handled Arctic Gardens' incorporation, didn't he?

A. Yes, he was Mr. Brehm's attorney.

Q. Jones and Bronson, I think you said, had something to do with Alpine Ice Cream Company going into Arctic Gardens?

A. I am quite sure they did. [2924]

Q. Mr. Yothers handled the purchase of land for the Alpine Plant?

(Testimony of Hans Forster.)

A. Well, Mr. Yothers bought us some lots that we haven't got any buildings on at the present time that is surrounding the Alpine Dairy buildings.

Q. Were Jones and Bronson attorneys for Issaquah Creamery Company over many years?

A. I think Mr. Taylor called in Mr. Jones on the division, and I think it was probably the first time, on the division of Alpine Dairy from Issaquah Creamery Company.

Q. And from that time, they were attorneys for Issaquah Creamery Company, weren't they?

A. Yes, I would think so.

Q. Did they keep the minute book?

A. I couldn't tell you; either Mr. Taylor did or the attorneys at Jones and Bronson.

Q. But, in spite of having Mr. Wettrick as your attorneys in the late 20's I think you said, and Jones was your attorney since the splitting off, you were buying many of the properties and businesses without legal advice, weren't you?

A. Mr. Wettrick wasn't my attorney in the late 20's. He was Andres' attorney. I just told you I knew him. [2925]

Q. I asked whether he did some legal work.

A. I think he did some work for us in the 30's, yes, I don't know when.

Q. But in a large number of these acquisitions of property and business, you had no legal representation, did you?

A. No, Hicks Taylor done most of it.

Q. Actually, you started buying businesses with-

(Testimony of Hans Forster.)

out consulting a lawyer before you had any association with Mr. Taylor, didn't you?

A. Well, I bought the Falls City cheese factory without—I didn't know any attorney.

Q. And you bought Issaquah Creamery Company without any legal representation, didn't you?

A. Well, I think Mr. Okton represented Mr. Peters.

Q. Who represented you?

A. Myself, I guess. Nobody.

Q. The simple fact, is, isn't it, Mr. Forster, that in all those years, you didn't want to pay any attorney's fees in these transactions?

A. I don't know why I wouldn't. If I hire somebody, I pay the bills. Mr. Taylor conversed with Jones and Bronson. He is the one that conversed with Mr. Wettrick, and with Mr. Grill and handled it. [2926]

Q. Out at Issaquah, I think you testified that you had an office——

A. (Interposing): That is right.

Q. (Continuing): ——at the Issaquah Creamery Company? And that Mr. Erickson had an office next to yours? A. Yes.

Q. And you came in there every morning?

A. Just about every morning, yes.

Q. And stayed for an hour or two?

A. That is right.

Q. You were there all day Wednesdays?

A. Well, during a certain period, I was. I haven't over the last, oh, I would say, seven or

(Testimony of Hans Forster.)

eight years, stayed all day Wednesday. I did for awhile, but the Seattle business started to need more attention all the time, and I—even part of the time come in here on Wednesday over the last seven or eight years.

Q. Well, you were at Issaquah part of Wednesday?

A. I was there, started from there, every morning.

Q. Mr. Erickson was there at Issaquah when you were there, wasn't he, at the office; usually?

A. That is right, unless he took a day off.

Q. And Taylor was not there except once a month, was he?

A. Oh, I wouldn't say it was just once a month. I think he stopped by there once in a while.

Q. You said he stopped by on his way to his summer place?

A. That is right; or something special came up, he came out. I couldn't say it was just once a month.

Q. No; but on the average, in general, he was there only one day a month, wasn't he?

A. The average definitely was more than once a month because he always came out one day a month, and the average would have to be more than one day a month, because sometimes he came out more than one day a month.

Q. He came out extra times usually in the evening or in the morning on the way to the summer place, wasn't it?

A. Unless there was some extra work and he

(Testimony of Hans Forster.)

had some other clients in Issaquah, Issaquah Transportation, and Stoneberg Chevrolet, and when he came to work with those people, he stopped at the Creamery to converse with Mr. Erickson or me on different problems [2928] that came up.

Q. But in general, day after day, you were there with Mr. Erickson and Mr. Taylor was not there; isn't that right?

A. That is right. I was there with everybody, not only Mr. Erickson.

Q. Mr. Erickson was your office manager, wasn't he?

A. He had charge of the office under Taylor's supervision.

Q. He was your office manager, wasn't he?

A. He was under the supervision of Mr. Taylor. All my offices were.

Q. I asked if Mr. Erickson wasn't your office manager?

A. Well, he never took any orders from me. He got paid by Issaquah Creamery, if that is what you mean.

Q. Who owned this business?

A. I did.

Q. Mr. Erickson worked for you, didn't he?

A. That is right.

Q. He was your office manager?

A. That is right.

Q. He supervised the bookkeeping? [2929]

A. Whatever part he had in it. I know that the

(Testimony of Hans Forster.)

girls in the office there worked under him. He gave them instructions.

Q. Well, the books were kept there, weren't they, in that office?

A. Not all of the time. Hicks Taylor kept part of them.

Q. He had the general ledger, but the books of account in which entries were made and receipts and disbursements were kept in that office at Issaquah?

A. They were, I think, for Issaquah Creamery; not Alpine Dairy, from what I understand.

Q. And Mr. Erickson had charge of the book-keeping? A. That is right.

Q. He was in charge of paying all of the expenses? A. That is correct.

Q. He paid the farmers for the milk?

A. That is right.

Q. He was in charge of sending out all the bills to your credit customers?

A. You are talking about just those two enterprises now? [2930]

Q. I am talking just about Issaquah, or Issaquah and Alpine, but Issaquah particularly.

A. Yes.

Q. Now, those two enterprises were 100 percent owned by you, weren't they, one as a proprietorship and the other a corporation in which you held all the stock? A. That is right.

Q. So that whatever Mr. Erickson did or didn't

(Testimony of Hans Forster.)

do, would eventually result in a gain or loss to you, wouldn't it?

A. There is no question about it, yes.

Q. Did you ever talk to Mr. Erickson while you were in the office, day after day?

A. I would think so.

Q. What did you talk to him about?

A. Oh, I talked to him about probably the buying price of the milk. We paid the producers twice a month. And talked over labor contracts with him and probably checked over the—some of the, time schedule, the time cards, of—to see how much overtime was being put in and how much—how many people we had.

Q. You say you never talked to him about the books, though? [2931]

A. Never talked to him, how he kept the books, no.

Q. You never talked to him about who kept the books?

A. How he kept the books, or how he handled it, no.

Q. In other words, you mean by that you never talked to him about whether he should have another journal or different kind of ledger cards, or something like that?

A. I didn't even know what kind of a system he had. He never talked to me about it, because he never asked me those questions.

Q. But you did talk to him about what was in the books, didn't you?

(Testimony of Hans Forster.)

A. Just about—what do you mean, “What is in the books?”

Q. In talking to him about the information and the figures that were going into the books, or that were in the books?

A. I don’t think I have talked to him about anything that went into any of his books. I told you I talked to him about the milk pricing, and I talked to him about the labor and about the time cards. I never asked him how he handled any of his books, what he [2932] entered or what he did not enter, or how he handled it. He never asked me, and I never answered those questions.

Q. Did you ask Erickson for figures on purchases?

A. I asked Erickson for figures on purchases when Taylor came out. I didn’t only. A lot of times I didn’t ask him; he made it up himself, and when Taylor got through with his figures, he would come in and give us some unusual large purchase that maybe would affect the profit and loss, and he talked to Taylor and I about it.

Q. Is that the only time you would talk to Mr. Erickson about the amount of purchases?

A. That is the only time, yes.

Q. Mr. Erickson would have to get the purchases off of his books, wouldn’t he?

A. I would say he would have to prepare them for Taylor.

Q. He would have to get them off of his books, wouldn’t he?

(Testimony of Hans Forster.)

A. I would guess that is where they are, yes.

Q. Likewise, when you asked him for figures from sales, you would have to get them off the books?

A. Well, I would say he had to get some of them [2933] from Hicks Taylor, because Hicks Taylor had the sales of Alpine Dairy.

Q. You say he would not get the sales figures from the books?

A. I don't know. You have to ask him. He will maybe tell you. I don't know where he got the sales figures.

Mr. Keesling: May I ask Counsel to designate? He is talking about "the books". Alpine or Issaquah? It is hard to follow the question when he says "the books".

Mr. Le Sourd: We are talking about Issaquah.

Mr. Keesling: He started out to talk about Issaquah, and in the last question, I think the two companies——

Mr. Le Sourd: (Interposing) We will confine it to Issaquah.

Q. (By Mr. Le Sourd): Did you say he did get the sales figures from the books?

Mr. Griffin: He didn't say that.

A. I wouldn't know where he got it. You would have to ask him. He told me he got sales figures. I didn't know where.

Q. (By Mr. Le Sourd): Did you ever ask Mr. Erickson for those [2934] sales figures at times

(Testimony of Hans Forster.)

other than when Mr. Taylor was there, once a month?

A. No, I wouldn't think so. That is the only time he came into the question, just how the sales worked out.

Q. You weren't interested from day to day just how much you were selling?

A. No, that is an impossibility. He couldn't—I never asked him from day to day. It was just sales figures I got from Hicks Taylor and profit and loss statement, and at the end of the month, but we never had a breakdown of any daily sales. You could average it out afterwards if you run a thirty-day a month and work out the daily sales.

Q. Did you ever ask Erickson what your general balance was?

A. Well, he told me, too, when we was overdrawn.

Q. Did you ever ask Erickson about particular checks, or did Erickson ever ask you about certain checks, whether to charge them off?

A. No, I think he told me when so many checks came in, larger ones especially, on the accounts that I watched the collection on, but he didn't tell me anything about he handled it on his books, if N.S.F. went back to the account or how we handled it. He just told [2935] me if we had N.S.F. checks, if it was a large account, and to get hold of the purchaser and tell them the check bounced.

Q. Did he ever ask you about particular ac-

(Testimony of Hans Forster.)

counts, whether he should charge them off or try to collect them?

A. No, I think Miss Neukirchen handled the credits there most of the time, and she is the one that would tell me if an account didn't pay. Just like I say, out at Issaquah Creamery, maybe the six large accounts was fifty percent of our business, or seventy-five percent of our business, and it was the large accounts I handled and she would call it to my attention if a large account didn't pay out in a 30-day limit.

Q. You would tell her whether she should charge them off or continue to collect it?

A. I never told her to charge them off.

Q. What would you tell her about that account?

A. I told her to tell me when the guy didn't pay me and I went after him, either cut him off on his supply, or the check came in.

Q. When you had a back account and were not able to collect it, and it went on for a long time, what did you tell her to do with it? [2936]

A. She didn't handle that part.

Q. Who handled that part?

A. Taylor and Harold Erickson, and if we had some particular accounts that quit buying from us and we couldn't collect, I turned it over to attorneys for collection, or the Credit Men's Association. I don't know, I didn't have anything to do with that part.

After the account went awhile, and they couldn't

(Testimony of Hans Forster.)

pay the bill, Mr. Erickson and Mr. Taylor decided what to do with the account.

Q. Mr. Erickson and Mr. Taylor would advise without consulting you whether an account was bad and should be charged off?

A. Well, if the account was—until it had to be charged off, they wouldn't consult me about it.

If the account didn't pay, and we couldn't get it, we cut the supply and they decided if they was going to try to keep it up or if they was going to go ahead and turn it over for collection.

Q. I thought you were the man in touch with the customers in handling the credit?

A. I was in touch with the customer until the customer couldn't pay the bill, and I was the one that brushed him up to try to get him to get the money on a [2937] certain day, but you are asking me about customers that went sour and wouldn't pay his bills, and we had to cut him off, and you asked me if I knew anything about taking accounts off of the books or turning an account over for collection.

I didn't have anything—I never talked to anybody about them.

Q. How would Mr. Erickson know he couldn't collect from a customer without asking you about it?

A. He would ask me about it. He could tell if it didn't come in, and I would tell him.

Q. He would ask you then if it was collectible or not?

A. He asked me if the account was any good or

(Testimony of Hans Forster.)

not. That only came up on the year-end when Mr. Taylor finished up his year-end statement.

Q. Now, all these things we have been talking about are matters that are in the books, is that right?

A. Yes, I would think so. They must have kept the accounts in the books, yes.

Q. When you say you never talked to Mr. Erickson about the books, you don't mean that you didn't talk to him about the figures in the books?

A. I didn't talk to him about the figures in the books. You asked me about some of the accounts that [2938] couldn't pay their bills, and I think I answered you correctly on that. If you ask me the question if I knew anything about his bookkeeping practice or what he done as far as his figures in the books was concerned, I have to say I don't know anything about it. I never talked to him about those figures in the books.

Q. You had a vital interest in the figures in the books, didn't you, as far as sales, purchases, and expenses?

A. That is right, and I got them once a month from Hicks Taylor.

And you went through a whole month without asking for any of that information month after month?

A. Oh, yes; they couldn't get them together. Normally, to get a monthly statement. You are talking about getting my figures during the month.

(Testimony of Hans Forster.)

Q. You talked to Erickson about the gallonage of gasoline shown on the books, didn't you?

A. I told him to check the gallonage against the receipts, I think probably once or twice, just to see if we was getting the right amount.

Q. The receipts you are talking about were Time Oil Rebates, aren't they?

A. That is right. [2939]

Q. And once or twice you talked to Mr. Erickson and had him check the gallonage on the books against the rebates given you?

A. I didn't—I didn't tell him to check the books. I told him to check the invoices of the Time Oil Company, the invoices of the daily slips they send with the gallonage.

Q. You considered the invoices as part of the books?

A. Well, that is where he had to get his figures from, the invoices.

Q. Then you knew that Erickson was keeping records of the gallons of gasoline used by Issaquah Creamery, didn't you?

A. I don't think he kept track of the gallonage. That is the reason he had to add up the slips.

Q. And what did he keep track of with regard to the gasoline?

A. I don't know. You have to ask Erickson. I just asked him a couple of times to give me the amount of gallons, and he had the usual receiving slips.

Q. So he did have invoices showing the gallonage and the charge for it, didn't he?

(Testimony of Hans Forster.)

A. I wouldn't know what the amount on the invoice is. I know they leave a delivery slip with the [2940] amount of gasoline that is delivered with them. The gallonage of the gasoline that is delivered to the tanks. What they bring in on the invoice, I wouldn't know.

I wouldn't have to add it up, if they have the gallons on the invoice at the end of the month. I haven't seen any of those statements, but I have seen some of the delivery slips. In fact, I probably signed some of them if the tank wagon got there at the same time I was out in the yard.

Q. You know that Mr. Erickson was entering the expense of the gasoline in the books, didn't you?

A. I would think so.

Q. You knew that the expense of this gasoline was an expense of the business?

A. That is right.

Q. And when you secured expense figures at the end of the month to make your own mental calculation of profit, you assumed that those figures included gasoline expense, didn't you?

A. As far as I was concerned, it included all of the expenses.

Q. And you deducted all that expense in arriving at your estimate of profit?

A. Well, it is the expense that had something [2941] to do with the profit or loss, or either one of them.

Q. You knew that your profit was being reduced by the cost of the gasoline on the books, didn't you?

(Testimony of Hans Forster.)

A. I would say that that is an item, yes.

Q. And you knew that the—that Taylor was getting the figures for his tax returns from these books?

A. That is right.

Q. And you knew that the cost of gasoline was reducing your profit on your income tax return, didn't you?

A. I didn't think about the income tax return. I told Taylor the amount of money I was receiving from the Time Oil. I don't know if he added it into the income tax or not.

Q. I am asking you about the cost of gasoline as shown on the books of Issaquah Creamery. You say that you knew it reduced the profit; is that right?

A. I knew that anything you bought would reduce the profit, yes.

Q. And you knew that Taylor was taking the figures from these books for his tax returns?

A. That is right.

Q. So that you knew that the profit on the tax return was being reduced by the gasoline as shown on the [2942] books of the Issaquah Company, didn't you?

A. That is right; if I didn't tell Taylor about receipts from Time Oil, Taylor knew about it so that I did not see how it affected tax returns if he put it in.

Q. Did you give Mr. Erickson the amount of Time Oil rebates so that he could enter it as a reduction of the gasoline expense?

(Testimony of Hans Forster.)

A. I think the only time I gave him the slips is when I wanted him to check the gallonage.

Q. Then your answer is "No, you didn't"?

A. My answer is during the times I wanted him to check gallonage, that is when I wanted him to check the slips.

Q. And that was once or twice? A. Yes.

Q. And other than that, you did not give Erickson the amount of rebate of the Time Oil Company so that he could reduce his figures by that much?

A. I didn't figure I had to give it to Erickson. I gave it to Taylor.

Q. Then you permitted the books to show larger gasoline expense than was incurred?

Mr. Griffin: Objected to as argumentative. He said he didn't know what the books showed. [2943]

The Court: Objection sustained.

Q. (By Mr. Le Sourd): In regard to giving this information to Taylor, how often did you talk to Taylor about Time Oil?

A. I talked to him about the original—when the original deal was made, and I would say I talked to him three or four times a year.

Q. Three or four times a year you talked about Time Oil?

A. Well, that is right. Talked to him about it when they increased the percentage and I asked him about it when we first started, if there was anything wrong about it, and he said "No".

Q. How many times was the percentage increased? A. I think twice.

(Testimony of Hans Forster.)

Q. How many years did you get these rebates?

A. I couldn't tell you offhand. I think the records from Time Oil should show it.

Q. You got them all through this period, 1945 to 1949, didn't you?

A. I wouldn't know if it was all during the five years. I can't tell you.

Q. It was for many years, wasn't it?

A. Well, I couldn't tell you if it was five [2944] years or six or four.

Q. You talked to him at the beginning, and you talked to him when the rate was changed, which you said was twice. In addition to that, did you talk to him? You said three or four times a year?

A. Three or four times a year, yes, that is right.

Q. You then have a definite recollection at present in your own mind of talking to him each of these times?

A. Each of these three or four times?

Q. That is right.

A. I definitely gave him a figure at the end of the year, what the rebate was.

Q. At the end of the year, you gave him a figure for the Time Oil rebate? A. That is right.

Q. And that is the total amount you had received from Time Oil for that year?

A. I gave him the approximate amount, yes.

Q. You gave him an approximate amount? Well, had you kept records during the year of what you received from Time Oil?

(Testimony of Hans Forster.)

A. Well, it was part of my cash that went into my savings account. [2945]

Q. Did you keep any records of how much of this cash that went into your savings account was from Time Oil Company? A. No.

Q. And how often did you receive these payments from Time Oil Company?

A. Oh, sometimes they would wait a couple of, two or three months, and sometimes monthly.

Q. You kept no records? A. No.

Q. On your deposit slips, did you mark this particular deposit as being from Time Oil Company? A. I just marked "cash".

Q. You just marked "cash". At the end of the year then you knew what the amount was you had received from Time Oil Company during the year?

A. I knew the approximate amount.

Q. You gave that amount to Mr. Taylor?

A. I told him about it, yes.

Q. Did you give that amount to Mr. Taylor?

A. I told him about the amount.

Q. You told him what the amount was?

A. I told you "approximate amount."

Q. You told him what the approximate amount was?

A. That is right. I didn't keep track of it. [2946] I knew what the approximate amount was per month, and he could figure it out, what the amount was for the year.

Q. Did you tell him it was an appropriate amount?

(Testimony of Hans Forster.)

A. That is right, because we didn't keep track of it.

Q. Did he ask you for the exact amount?

A. No.

Q. Did he ask you why it was not on the books of Issaquah Creamery Company?

A. No, he knew about the original arrangements so he didn't ask me about it. He didn't ask me about if it was in the books of Alpine Dairy or not. I don't know if he put it in there or not. I can't tell you.

Q. Where did these year-end discussions occur?

A. Most of the time when he asked me about the interest, and my savings account and my donations.

Q. In other words, it was at the time when he asked you if you had any personal income that should be reported?

A. That is right.

Q. And it was at that time you gave him these figures? [2947]

A. That is when I gave him the approximate figures and told him the approximate amount what Time Oil Company was running, a certain amount a month.

Q. Did you make any record at that time of what the information was you gave to Mr. Taylor?

A. No, he came up to the house, and that is when I gave it to him.

Q. Did Mr. Taylor make a record at that time of the information you gave him?

A. I think he marked it down, yes, on a piece of paper.

(Testimony of Hans Forster.)

Q. What kind of a paper did he mark it on usually?

A. Oh, probably an envelope that he had in his pocket.

Q. Sometimes he put it on the back of his working sheets, didn't he?

A. He didn't have his working sheets when he went up to lunch with me at the house. He maybe put it on his working sheets afterwards when he got down to the plant.

Q. Then you are definite in your recollection that he did not have working sheets with him at your house? [2948]

A. I am definite that he didn't have his working sheets or ledger or anything at the house. He just came for lunch and we discussed the general situations of the different businesses up there, and then he went back down.

Q. You are definite in your recollection that when you gave him these annual figures he did not have these working sheets there?

A. Well, I am definite in the recollection that I never—that he never had the working sheets up at the house.

Q. Well, I am asking you if you are definite in your recollection that when you gave him these figures he didn't have these working sheets?

A. Well, I am quite positive that he didn't. It was on the year-end statements that we talked about those things and most of the discussions was up at the house when we had lunch.

(Testimony of Hans Forster.)

Q. What did you talk about the other three times during the year when you talked about Time Oil Company with Mr. Taylor?

A. Oh, I told him when we made the switch to—when Issaquah Creamery finally bought from Time Oil and I told him that Mr. Green wanted to get business out at Apex Farms. [2949]

Q. Well, that is twice. We have many years here. Three times a year. Is that all you talked to him about it?

A. Well, I just—I just know that I definitely talked to him about it quite a few times because Mr. Green was putting on a lot of pressure trying to get the rest of the business.

Q. Then you are not sure you talked to him three or four times a year?

A. Well, I am just as sure as I talked to him three or four times a year as I would probably talk to him more than that or less than that. I definitely talked to him quite a few occasions. You pin me down to three or four times a year, and ask me how many times in 1945 or how many times in 1947. It is just an impossibility. I know I talked to him about it. He knew about it.

Q. Mr. Forster, you are the one that said three or four times a year.

A. Well, that is my recollection, yes.

Q. That is your recollection?

A. Yes, that is right.

Q. Three or four times a year?

A. That is right.

(Testimony of Hans Forster.)

Q. The fact is, Mr. Forster, that you never talked [2950] to Mr. Taylor about Time Oil Company?

A. Oh, yes; I definitely did. I definitely talked to him when I made the original arrangement, because it was changed from the way Signal Oil handled it.

Q. You directed Mr. Erickson to do many things with regard to the information in his books, didn't you?

A. You will have to read that again.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. (Continuing) Well, I never told Mr. Erickson anything how to handle his books.

Q. Didn't you direct him to calculate the Milk Equalization payments?

A. Well, we handled the Milk Equalization payments. As far as the pool is concerned, we consolidated. I didn't direct him to do that. He passed all of the figures to Mr. Keck at Apex Farms about the base and it was Mr. Keck that figured out the Equalization part for Apex Farms.

Q. And that was done under your direction, wasn't it? [2951]

A. Well, it wasn't done under my direction. It was a part of the deal we had with Consolidated Dairy products as far as the pool arrangement was concerned, and it was up to Mr. Erickson to calculate the base that he got from Consolidated. He

(Testimony of Hans Forster.)

got the figures from Consolidated Dairy Products, how much milk was purchased in the base period, but it wasn't under my direction.

Q. You were the one handling the purchase of the milk?

A. I was the one handling the purchase of the milk, but this was a bookkeeping part, and didn't have anything to do with me.

Q. It was part of the method of determining the cost of milk, wasn't it?

A. Oh, no; the part I had to do with was buying the milk from either individual producers on the purchase of milk, the pricing of milk from Consolidated Dairy Products that the individual dairies had to pay, and the price we finally had to pay, but it didn't have anything to do with the calculation of the pool arrangements.

Q. You say you had nothing to do with that?

A. Not with that part, no.

Q. Were you interested in those Milk Equalization [2952] checks?

A. I was interested in the buying price of milk, definitely.

Q. And that was part of the price of the milk?

A. Well, if it was part of the price of milk to the different plants—each one of them didn't have an Equalization check to pay Apex farms, they would have bought the milk cheaper than Alpine Dairy but I didn't have anything to do with so far as figuring it out.

(Testimony of Hans Forster.)

Q. Well, the first milk Equalization checks came from Apex Farms? A. That is right.

Q. And you only had a partial interest in Apex Farms? A. That is correct.

Q. And you were 100 per cent interested in Issaquah and Alpine? A. That is right.

Q. So that you would be interested in getting those checks, wouldn't you?

A. Are you trying to infer that Apex paid more for the milk than they should have because I only had 67 per cent interest in it? [2953]

Q. No, Mr. Forster, I am not. I am trying to show that you had a financial interest in getting those Equalization checks into Issaquah and Alpine.

A. Well, I had an interest in all my businesses, not only in those checks. I don't know why you are just referring to the checks. I didn't do any figuring on the deal.

Q. But you were interested in the checks, weren't you?

A. I was interested that everything was worked out all right, yes.

The Court: Ladies and Gentlemen of the Jury: We will now recess for luncheon.

The Court calls your attention to the admonition given on similar occasions, and asks that you heed that admonition on this occasion.

You may now be excused until 1:45.

(Whereupon, the Jury retired from the courtroom.)

(Testimony of Hans Forster.)

The Court: You may step down.

The Witness: Thank you.

(Whereupon, the witness withdrew from the witness chair.)

The Court: Court will recess until 1:45.

(Whereupon, at 12:16 o'clock, p.m., a recess was had in the within-entitled and numbered cause, until [2954] 1:45 o'clock p.m. April 1, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

Mr. Moriarty, did you get out a transcript in connection with this?

Mr. Moriarty: Yes, I think we have it. It won't come up this afternoon, but it will come up shortly after.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all defendants are present in the courtroom?

Mr. Moriarty: Yes, your Honor.

Mr. Griffin: Yes, your Honor.

The Court: You may proceed, Mr. LeSourd.

Q. (By Mr. LeSourd): Mr. Forster, this morning you testified that at the end of each year when you were giving to Mr. Taylor information on your personal income items to go in your return, you gave him amounts for the Time Oil Company rebates.

(Testimony of Hans Forster.)

Do you wish to change that testimony in any way? [2955]

A. No, I testified this morning that I told Mr. Taylor when I made the original arrangement, and I told him the approximate amount per month that Time Oil rebate was.

Q. At the end of each year you gave him the approximate amount of the Time Oil rebates for the year?

A. Not for the year. I told him what the approximate amount per month was, and I told you I spoke to him about it a couple of two or three times a year, maybe four times.

Q. Well, now, I understood you this morning to testify that you talked to him only once a year about the amounts. What is your testimony now?

A. I don't—I told you I recall of telling him when the original deal happened, and I told him afterwards how much per month it amounted to, and at the end of the year when he talked about other income, I told him about one of them was the Time Oil, and I told him approximately how much it was a month, and I told him about some of the cash payments that I had on the farm until they came by check.

Q. You did at the end of the year tell him approximately how much the Time Oil rebates were?

A. I told him approximately how much it was per [2956] month.

Q. Have you ever made a statement under oath to the contrary of that?

(Testimony of Hans Forster.)

A. I wouldn't know.

Mr. Le Sourd: Mr. Moriarty, may I have Mr. Forster's statement?

Q. (By Mr. LeSourd): I hand you this document, Mr. Forster, and ask you if that is your signature?

A. That is right.

Q. And that signature is notarized?

A. Yes.

Q. And what is this document?

A. That is the document where I gave the testimony in this building on March 8, 1951.

Mr. Le Sourd: I think, perhaps, we should mark this for identification, your Honor.

The Clerk: Defendants' Exhibit A-62 marked for identification.

(Defendants' Exhibit A-62 marked for identification.)

Mr. Le Sourd: It starts with March 8th.

Q. (By Mr. LeSourd): Mr. Forster, I will ask you whether, on March 8, 1951, in this Court House, there being present [2957] yourself, Mr. Kachlein, Mr. Brody, Mr. Marx, Mr. Eppler, and a shorthand reporter, you did not make under oath this answer to this question:—or these questions,—excuse me:

“Question 44: Did Sam Green ask you whether you preferred to have these rebate payments in the form of currency, by check, or credited to your account?

“Answer: No, definite instructions was that it had to be cash payment and I asked him the reason

(Testimony of Hans Forster.)

why, and he said it was certain arrangements or agreements among the Oil Companies that he couldn't issue any checks.

“Question: Did you ever give any monthly or yearly figures on these cash rebate payments to Hicks Taylor?

“Answer: No. I am sure I would have if he had asked me for it. He knew I was getting it, and I figured if he wanted them, he knew what the amount of the [2958] rebate was, and all he had to do was to check the monthly gallonage at both Issaquah Creamery Company and Alpine Dairy, and he would have gotten it.

“Question: Did you ever mention these rebate payments to Taylor at the time you were giving him other information for preparing your annual income tax returns?

“Answer: I am sure I mentioned the payments to him. I did not mention the amount, because I did not know the total amounts for the year.”

Did you make those answers to those questions?

A. If that is what it says in there, that is what I did, yes.

Mr. Griffin: At this time, I offer in evidence Exhibit A-62 for the entire testimony.

Mr. Le Sourd: If the Court please, I don't believe it is relevant for the entire testimony. It is used for impeachment purposes. I have no objection to it on the statements which relate to the Time Oil [2959] which I questioned him about.

The Court: You object to it otherwise?

(Testimony of Hans Forster.)

Mr. Le Sourd: I do, yes. It is largely self-serving in character.

The Court: The Court will sustain the objection. If you wish the portion in——

Mr. Griffin: (Interposing) Well, I——

The Court: (Interposing) It is in the record. However, I don't know that it serves any purpose unless the whole thing goes in. The Court will sustain the objection.

Mr. Griffin: I am offering the entire testimony, the testimony of that hearing. As I understand, the Court sustains the objection to that and I desire that there be read to the witness the entire testimony in regard to the Time Oil sales then, rather than an excerpt from it.

The Court: Well, he may read it himself, if he wishes to, and if he wishes to add to his answer, he may do so.

Mr. Le Sourd: I will be glad to read it. That is, unless Mr. Forster wants to read it.

Mr. Griffin: I would like to have counsel read it.

Mr. Le Sourd: Fine; all right. [2960]

Mr. Griffin: It begins with Question 41. Oh, 42.

Mr. Le Sourd:

“Question: Will you describe rebate payments received by you from Time Oil Company as to how they began, with whom you discussed them, and what you did with them after you received them?

“Answer: I can't give you the exact year that those cash rebates started with Time Oil Company, but we was buying the gasoline from Signal Oil

(Testimony of Hans Forster.)

and we was getting one cent a gallon rebate that was taken off the statement or monthly billing, and Mr. Sam Green from the Time Oil Company solicited our account and told me that he could make me a better deal on gasoline than I was receiving, and he quoted one and one-half cent off of the tank wagon price, but he stipulated that discounts would have to be in the form of cash payments once a month. He [2961] also asked me to sign a one-year contract, and we placed the contract in escrow at Peoples National Bank, and made arrangements that neither one of us could take the contract out without both of us being present and when I would get those cash receipts, I would deposit them in my savings account.

“Question: Did you discuss it with Taylor and, also, if so, what did you say and what did he say?

“Answer: I am sure I discussed it with Hicks Taylor on several occasions during the period of the cash discounts and his answer was not to worry about it.

“Question:—

Mr. Griffin: (Interposing) That is the omitted part.

Mr. Le Sourd: Now, is there anything further you want read, Mr. Griffin?

Mr. Griffin: Not at this time.

Q. (By Mr. LeSourd): Mr. Forster, before the noon recess, we were [2962] talking about your relationship with Mr. Erickson in the office. If you

(Testimony of Hans Forster.)

wanted to know whether a certain bill had been paid, would you ask Mr. Erickson?

A. No, I would ask Miss Neukirchen.

Q. But you didn't call Mr. Taylor in Seattle and have Mr. Taylor call Mr. Erickson or Miss Neukirchen?

A. No, of course, not.

Q. If you wanted a bill paid, did you tell Mr. Erickson to pay it?

A. I didn't tell Mr. Erickson to pay it. He done that as part of his duty. He handled the accounts payable.

Q. Did you ever ask him to pay a bill?

A. If there was any question about some special bills that he didn't know anything about, he might ask me about it, yes. I probably asked Mr. Taylor on some of the bills, some of the equipment that he bought for the offices, if they was all right, and unless his signature was on there, that it was okeh Mr. Erickson and myself checked with Mr. Taylor and asked if he bought typewriters, or adding machines, or Comptometers, or whatever it was he bought for the different concerns.

Q. Mr. Taylor wasn't there from day to day, was [2963] he?

A. No, but we called MAin 0079 many times during the week.

Q. How many times would you say you called him?

A. Taylor?

Q. Yes.

A. I told you a couple of times a day, or a couple of times a week; it all depends on the occa-

(Testimony of Hans Forster.)

sion that would arise that I should talk to him about it, or he called me.

Q. So that you talked to him several times a day?

A. On occasions, I talked to him several times a day, yes, sir.

Q. All for fifty dollars per month per company?

A. All for fifty thousand dollars during the entire period.

Q. Fifty thousand dollars during twenty years for about eight companies, is that right?

A. Well, it wasn't eight companies twenty years ago. It started out with one.

Q. It was eight companies during the period we are talking about it, wasn't it?

A. Eight companies between 1945 and 1949, yes.

Q. And during that period, Mr. Taylor [2964] was receiving about fifty dollars per month per company, wasn't he?

A. Well, I think the figures show it averaged up better than that during the 1945 to 1949 period; I think it amounted to twenty-five thousand dollars over the five years.

Q. Have you checked the average that he got during that period?

A. I didn't check the accountants. All I hear is the figures that came up in this trial in the last few months.

Q. If I tell you it averaged about fifty dollars a month, would you deny it?

(Testimony of Hans Forster.)

A. I couldn't deny it, because I wouldn't know if your statement was correct or not.

Q. Now, your testimony that Mr. Erickson didn't work under you was not correct, was it?

Mr. Griffin: Just a moment. I object to the form of that question. There was no such testimony.

The Court: I think the form is objectionable.

Q. (By Mr. LeSourd continuing): As I recall it, Mr. Forster, you testified yesterday or the day before, that Mr. Erickson did not work under you; is that correct? [2965]

A. Well, I was president of the company, and of course, so did Mr. Taylor; but Erickson worked under the supervision of Taylor. He didn't work under my supervision, under me. He worked for Issaquah Creamery, yes.

Q. He worked under you?

A. Well, I guess that at the top if I was president and general manager, I suppose.

Q. And from day to day, you gave him directions and instructions and requested him to do this and that in the office, and the other thing, didn't you?

A. Oh, no; there probably was days at a time that he never got any instructions from me about anything that came along. If there was some special information I wanted, I asked him to give it to me; and if he couldn't give it to me, he told me I would have to talk to Taylor and get it from Hicks.

(Testimony of Hans Forster.)

Q. You also testified, didn't you, that Mr. Taylor was the overseer of the girls in the Issaquah office?

A. Well, I didn't testify that he was overseer. I don't think I ever used that word. I told you he had charge of all the offices, all the work in the offices, and the different office managers, like [2966] Mrs. Wilcox, or Mr. Erickson, or Mr. Keck worked under Hicks Taylor's supervision, and the fellow I looked to was Hicks Taylor to handle it. I don't think I used the word "overseer," but if that is the word you care to use——

Q. (Interposing) That is what I remembered, Mr. Forster.

A. All right.

Q. Actually, Mr. Erickson was the overseer of the girls in the Issaquah Office, wasn't he?

A. As you go up the ladder, he was the overseer of the girls and Mr. Taylor was the overseer of Mr. Erickson.

Q. You were not the overseer of Mr. Erickson?

A. No, I wasn't.

Q. Mr. Erickson from time to time put checks for business receipts and cash on your desk, didn't he?

A. Well, I remember checks. I don't know if Mr. Erickson ever handled the cash or not.

Q. Mr. Erickson or the girls under him put cash on your desk?

A. That is right.

Q. And checks?

A. That is right. [2967]

Q. Including business receipts for Issaquah and Alpine from the Apex Farms?

(Testimony of Hans Forster.)

A. That is correct.

Q. And business receipts from Finstad and Utgard?
A. That is right.

Q. And business receipts from Consolidated Dairy Products?
A. That is right.

Q. Business receipts from Renton Ice?

A. That is right.

Q. Business receipts from the Arctic Gardens?

A. Well, I think most of the time those checks from Arctic Gardens was brought out by Mr. Taylor. He came out to go over the books, and Mr. Taylor gave me those checks.

Q. You got those from Mr. Taylor?

A. I think most of them. I don't know if he mailed any of those, or not, but I know I can recall times when Mr. Taylor gave me those checks direct when he came out on a Saturday for the month previous.

Q. These were checks for truck expenses and the like?

A. These was the checks for some of the labor. We handled the labor out of the Alpine Dairy for the [2968] truck drivers that drove the frozen food truck, and I think probably there was some gasoline included, and maybe some mileage.

Q. Just like the invoices we introduced here in evidence?
A. That is right.

Q. I don't know if you saw them or not, Mr. Forster; and there were business receipts from Holly and Amalgamated Sugar Companies, put on your desk?
A. There were discounts.

(Testimony of Hans Forster.)

Q. Discounts?

And business receipts from the Casein Company?

A. That is right.

Q. Business receipts from Morrissey?

A. Well, that is a sugar company you mentioned.

Q. Is it? I am sorry.

Now, as I recall your testimony, it is simply that Mr. Erickson told you he had no place in the books to enter these?

A. That is right; he said it was odds and ends like I remember, the gasoline deal, we wasn't selling any gasoline so that he didn't have any place to handle it, any place to put it.

Q. Did he tell you that every time he put a check on your desk? [2969]

A. No, he mentioned that on different transactions, if a check came in, that I never seen before, I asked what it was for, and that is the answer I got.

Q. In other words, when he first put an Apex Farm check on your desk, he talked to you about it, and from that time on, he just put them on your desk?

A. Most of the time, it wasn't on the desk but in the desk.

Q. Well, in the desk? A. That is right.

Q. He just talked to you about it the first time?

A. Yes, I would think so.

Q. And I believe you testified that—did you—that when the cash was put on your desk for these

(Testimony of Hans Forster.)

cash sales, Mr. Erickson told you that he was not running it through the cash sales?

A. I don't think I have—I testified to that. In the first place, they didn't—nobody in the office, even Miss Neukirchen, ever told me. If they didn't take those items and run it through the sales, well, they didn't tell me that they didn't keep track, if they marked it down.

Q. Haven't you made the statement, either by testimony here or under oath to the Agents, that when [2970] those cash—that cash was put on your desk, you were told that they were not being run through cash sales?

Mr. Griffin: I object to the form of the question. If it is impeaching, time and place, and to whom?

(Whereupon, there was a brief pause.)

Q. (By Mr. LeSourd continuing): Referring, Mr. Forster, to Defendants' Exhibit——

The Court: (Interposing) You withdraw the last question?

Mr. Le Sourd: I will withdraw it, yes, your Honor.

Q. (By Mr. LeSourd continuing): Referring to Defendants' Exhibit A-62, the same testimony that you identified your signature on a few minutes ago, and also on March 8, 1951, before the same individuals that I named previously, I will ask you if you did not make the following answer to the following questions:

Mr. Griffin: Number?

Mr. Le Sourd: 109, Mr. Griffin.

(Testimony of Hans Forster.)

Q. (By Mr. LeSourd continuing): "Question: What did you do [2971] with the money accompanying the sales tickets?

"Answer: I deposited the money in my savings account. I felt as long as the money was loose, and they were not running it through the cash sales, I knew that it was in a safe place, and I could produce it when it was needed."

Did you make that answer to that question?

A. (Witness nodded in the affirmative.)

Mr. Griffin: If the Court please, it is not impeaching in any sense.

The Court: It may not be directly impeaching. There may be some inference, and I think it is a matter that may be left with the Jury, and the Court will overrule the objection.

Q. (By Mr. LeSourd): You knew then, Mr. Forster, that this cash was not being run through the cash sales?

A. At the time I was questioned by Mr. Eppler and Mr. Marx, they kept trying on to impress me that it was quota sales, that we was selling more quota than we was allowed to, and as far as I knew, those slips wasn't set up as far as the quota sales was concerned. I still don't know today if the cash sales [2972] or the checks, was run through before they got on my desk. I don't know.

If I make that statement there, I think originally both Mr. Eppler and Mr. Marx tried to tell me and to have me be under the opinion, or try to go ahead

(Testimony of Hans Forster.)

and inform me, that we was running over-quota mix, and I knew that wasn't so.

Now, they probably have me mixed up on the deal, but so far as I knew, that is the only reason those cash slips were held out. They wasn't held out for any other reason except to try to keep away from that freezing of that mix that we had a quota on, which we didn't have a freezing quota.

The minute we got the O.K. from Washington that we could take that mix and freeze it and sell it as ice cream, that stopped. That is my explanation as far as I can recall it.

Mr. Griffin: If the Court please, I offer Exhibit for Identification A-62 insofar as the following question 110 and the following answer 110 are concerned involving this particular matter.

The Court: Do you wish to read it?

Mr. Griffin: Yes, your Honor.

Mr. Le Sourd: I have no objection.

Mr. Griffin: Question 110: [2973]

"How did you know that this money was not included in the cash sales if you never asked?

"Answer: It is hard for me to tell you after they put the money for a few days at a time in my desk drawer if they run it through the sales or not. It must be they had some purpose in putting it in my desk drawer."

Q. (By Mr. LeSourd): I take it it is your testimony now that you did not know it was not run through cash sales?

A. That is right, yes.

(Testimony of Hans Forster.)

Q. But you did know that the checks which were put on your desk were not being entered in the books, didn't you?

A. I never testified to that, and I still don't know if they was run in the books or wasn't run in the books.

Q. I thought you said when Mr. Erickson gave you these checks, he didn't have any place to enter them in the books?

A. He said he had no place to put them.

Q. He said he had no place to put them, or to put [2974] them in the books?

A. That is all that he told me. If they made those slips out when the checks came in, I don't know.

Q. He had a place to put the checks, didn't he?

A. That is right.

Q. In your desk; but what he told you was that he had no place to enter them in the books; wasn't that right?

A. I didn't ask him. The answer he gave me is he didn't have no place to put them. I don't know if he meant to mark it down or what. When they received the checks, they must have made some record of it.

I didn't ask him.

Q. What conclusions did you draw from what he told you about when he meant about having no place to put them?

A. Well, just that. I took him at his word, what

(Testimony of Hans Forster.)

he said. There was no place to put them. That is why he put them in my desk.

Q. Did you draw from that that he had no other place to put the checks themselves?

A. I didn't draw any conclusions.

Q. And it is your testimony that you did not know from that that these checks were not being entered in the books? [2975]

A. That is right. I don't know if they kept a record of it, or didn't keep a record of it.

Q. You found out since, at least, that they were not entered in the books, haven't you?

A. No question about it. I found out about a lot of things since.

Mr. Griffin: My objection is to the form of the question, and the objection that it is somewhat unfair because on the discount checks, a hundred were entered in the books, as shown by this record.

Mr. LeSourd: Well, your Honor, they were entered in the books when written, but not entered in the books when deposited. They came back and should have been put back in income, and instead, were put in savings account.

The Court: Do you ask any action?

Mr. Griffin: I move that both the question and the answer be stricken, so that we can get the true facts about the matter, is all. If he eliminates the discount checks, I think the question is proper.

Mr. LeSourd: Well, for the time being, I will eliminate the discount checks, and withdraw the question and ask:

(Testimony of Hans Forster.)

Q. (By Mr. LeSourd): Except for the discount checks, you found [2976] out later that these checks were not entered in the books, haven't you?

A. That is right, yes. After the accountants went in and checked the books and records of the different companies.

Q. Do you know of any reason why Mr. Erickson wouldn't have entered these in the books unless he had been directed by you?

A. He wasn't directed by me not to put them in the books. He is the one that told me.

Q. Do you know of any reason why he wouldn't put them in the books?

A. I wouldn't have no answer for it.

Q. There were sales of casein from time to time which were entered in the books, weren't there?

A. There was some casein sales that were entered in the books, yes.

Q. So that Mr. Erickson had a place for casein sales certainly in the books, didn't he?

A. I wouldn't know if he had it before or if he had it afterwards, or if he had it at the time that this casein finally was disposed of.

Q. Well, he did enter casein sales from time to time in the books?

A. Well, we was making casein for quite a few [2977] years, and this is the last two shipments we had that was held over, and——

Q. (Interposing): So far as you know, those casein sales that went into your savings account

(Testimony of Hans Forster.)

are the only ones that he did not enter in the books, is that not right?

A. So far as I know, that is the only two I seen.

Q. Is it your testimony that at no time did you direct Mr. Erickson to give you the checks and cash?

A. So far as I remember, I don't know if at any time I told him to try to give me the checks or the cash.

Q. Nor ask him to?

A. Not as far as I remember.

Q. Now, I believe you testified that you questioned Mr. Erickson about the practice of not entering these receipts?

A. Well, I even told Mr. Taylor about it.

Q. How often did you talk to Mr. Erickson about it?

A. Well, I think I probably talked to him the time that some of those original checks came into his hands, and if he talked to me about it to start, I asked [2978] the question, "What it was for?"; and he said, "Well, I got no place for this. I don't know where to put it, and these are sales that are not a regular customer channel." And so he gave it to me.

Q. Is that the only time you talked to him about that?

A. As far as I remember, yes.

Q. Just the one time?

A. Oh, no; I talked about different items that

(Testimony of Hans Forster.)

came along. Whenever he spoke to me about it, or even if I seen the check that looked strange to me that was in my desk, I asked him about it, and that is when we had the conversation.

Q. And he always told you the same thing?

A. Well, in practice, I would say, yes.

Q. Now, these checks and this cash you deposited in your savings account 198?

A. That is right.

Q. Did you make any record of your own as to the amount of this income?

A. No, except those slips I gave or showed to Mr. Taylor on different periods. I showed him how much money I had in the Washington State Bank or Peoples National Bank.

Q. We will come—— [2979]

A. (Continuing): But it wasn't segregated.

Q. We will come to that matter in a little bit. Did you believe that these items were being reported on your tax returns?

A. As far as I knew, yes.

Q. Did you believe that they were in the books of Issaquah Creamery?

A. I told you before I didn't know if they was reported or not reported.

Q. And how did you believe they were being reported on the tax?

A. I told Taylor about the checks, and he is the one that audited the different companies where those checks came from. He knew all about Renton

(Testimony of Hans Forster.)

and all about Apex Farms, and he knew all about Conway.

Q. Then, in your belief that they were reported, you were relying entirely upon these conversations you say you had with Mr. Taylor?

A. That is right, yes.

Q. Now——

A. (Interposing): There was nobody ever told me anything to the contrary, that it wasn't in the books.

Q. Well, why did you mention these items to Mr. Taylor?

A. Why did I mention it to him? I wanted to know [2980] from him. I asked him what to do about it, and he told me not to worry about it, and I told him where I was putting it, and he said, "Don't worry about it."

Q. From that, did you take it he was entering them in your return?

A. I wouldn't know. I figure as long as he knew what I had, he would enter them in his return.

Q. You believed—I believe you testified that you thought you had a drawing account at both Alpine and Issaquah?

A. That is right.

Q. I believe you said that Mr. Taylor told you about your drawing account?

A. That is right.

Q. In talking about your drawing account to the Agents prior to trial, you didn't indicate that it was Mr. Taylor that told you; you indicated it was others, didn't you?

(Testimony of Hans Forster.)

Mr. Griffin: I object to the form of that question.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

The Court: You are assuming something not in evidence, Mr. LeSourd. [2981]

Mr. LeSourd: That may be. I will withdraw the question.

Q. (By Mr. LeSourd): The evidence in this case, I believe, Mr. Forster, showed that approximately twenty-three thousand dollars of your own personal expenses was paid by Issaquah Creamery Company during these years and charged off as expenses for tax purposes.

Do you recall how much it was?

A. No, I wouldn't know.

Q. Would that figure sound right from the evidence?

A. I haven't the slightest idea.

Q. You haven't the slightest idea. Now, the personal expenses that were paid, I think you said some of the bills simply arrived at the Issaquah office?

A. That is right; I would say most of them. I think that is the reason a lot of that happened on some of the cases like the doctor's bill, or some of those items.

Q. But other bills were brought by you to the Issaquah office, and given to Erickson, weren't they?

A. Well, there wasn't very many bills that I

(Testimony of Hans Forster.)

brought down to Erickson to pay. I think some of them [2982] was with those pocket checks that I had, and had the stubs on there that I marked "personal".

Q. In most of these, you simply wrote checks yourself on your pocket check book and made them payable from Issaquah Creamery Company?

A. No, I never did.

Q. I mean Alpine? A. Yes.

Q. Then these personal expenses paid by Issaquah Creamery Company were all written out by Erickson in the office, were they?

A. I would think so, yes.

Q. And in connection with those, did you clearly bring to Mr. Erickson's attention that they were personal expenses and not business expenses?

A. Well, he make out—he make out the checks before I ever seen the statement. In fact, I can't recall of any items, except that Television set that jokingly I told him to go ahead and it should be actual business expense—what place he put it, under plant expense or advertising, or what he did with it, I don't know. He never tell me, and I never asked the question, but if the bills came up to our home, we—I don't know of any time I brought a bill down and told him to pay it unless I felt it was a Company [2983] expense.

Q. Did he ever ask you whether a particular bill was personal expenses, or business expenses?

A. I doubt it.

Q. When you built the barn on your farm, and

(Testimony of Hans Forster.)

the bills were paid by Issaquah Creamery Company, did you talk to Mr. Erickson about that?

A. Well, of course, he knew I was building the barn, and there was never any question about that it was, the barn was, built, and it was my barn, and it was going to be on my farm. I don't know—I didn't tell him to charge it to anything else. I didn't tell him to put it any place except to make out the checks, because as far as he was concerned, he could keep track of it better than I could, and I didn't have that kind of money in my personal check account, and as far as I was concerned, it was definitely clear that it was my barn and it was charged against me.

Q. You think Erickson clearly knew that it was your own personal expenditure?

A. I don't think there was any question about it, that it was my personal expenditure.

Q. Did you direct Mr. Erickson to charge those to business expenses?

A. I have never directed him to charge any of [2984] the checks to anything.

Q. Do you know of any reason why he would have charged them to business expense if he wasn't directed by you?

A. I don't know of any reason why he wouldn't. I don't know of any reason why I would tell him to charge them to business expense, when it was a barn being built on my own farm.

Q. Mr. Erickson wasn't getting any financial

(Testimony of Hans Forster.)

benefit from charging those to business expenses, was he? A. No, of course not.

Q. You were the only one being benefited?

A. Well, as far as I am concerned, I am the one that is getting hurt. I can't see where you can mean I got any benefit out of it.

Q. You got a benefit out of it on the tax return filed for you in those years, didn't you?

A. So far as I am concerned, Hicks Taylor should have picked it up and charged it against my drawing account, and that is where I figured it was being done. I never had any idea that that thing was charged against plant expense or business expense. He knew about the farm, and he knew that I didn't build it from [2985] my own resources.

Q. How did he know about the barn?

A. Well, we—during the building of the barn, we discussed it many times. It took quite a long time to build it, and I know that quite a few times discussion wasn't only down at the plant and in the office, but it was—it was part of the discussion at the house when we had lunch, and I can't give you the exact date, but since this thing came up, both Erickson and I believe that Hicks Taylor went up to the farm with me, and not only that, I definitely know that I invited him to the barn dance, after the barn was built. If he came up or not, I can't swear; but he knew the boys that built the barn. It was neighbors right across the street from the Creamery, and Hicks Taylor knew I built the barn. There is absolutely no question about it.

(Testimony of Hans Forster.)

Q. And did you tell him that the expense of it was being charged to business expense?

A. I didn't tell him such a thing. I didn't know it was charged to business expense. If you go back in some of the statements, Mr. LeSourd, some of the statements that Hicks Taylor gave me—I don't know just what years it was, but for many years past, when I had the salary of twenty-four thousand dollars, I [2986] drew less than half of that amount, and I think we probably can produce some of those statements, and that there is a credit to Hans Forster of big amounts, twenty-five, twenty-seven, thirty thousand dollars that said, "Hans Forster", and I asked him several times what it was, and he said "That is the amount that you haven't drawn on salary since you have been getting twenty-four thousand dollars a year," and I always figured that I had a drawing account at Issaquah Creamery, and when he switched or cut my salary from twenty-four thousand dollars a year in 1940, when we acquired Alpine, to eighteen thousand, he is the one that told me about it. Not that it meant anything, because I didn't draw the full amount anyway, and I asked why, and he said, "The business is being separated and if you cannot get along on eighteen thousand dollars, you will have a drawing account at Alpine Dairy. It will be all yours." And that is the conversation.

So, I am positive that the understanding between Taylor and I was definitely that I had a drawing account at both places.

(Testimony of Hans Forster.)

Q. After Mr. Taylor reduced your salary in 1940 you drew all of your salary currently, didn't you?

A. I don't know if I started to draw it in 1940 [2987] or not, but I know the last years I started to draw it. Maybe it was 1940. Maybe it was 1941.

Q. And these personal expenses of yours that the company was paying were never changed when you reduced your salary? A. No.

Q. Were you ever billed for them?

A. Billed from who?

Q. By Issaquah Creamery Company for these personal expenses they were paying for you?

A. No.

Q. Well, a substantial amount, like twenty-three thousand dollars, did that make you curious as to why you weren't paying these personal—

Mr. Griffin: (Interposing) I object to the form of that question. There is no evidence of twenty-three thousand dollars.

Mr. Le Sourd: The evidence is in the record taken from Exhibits 279 and 280.

Mr. Griffin: The witness testified he didn't know the amount.

Mr. Le Sourd: I will withdraw the question.

Q. (By Mr. LeSourd): Did you ever become curious, Mr. Forster, as to why you were not paying your personal expenses? [2988]

A. Why I wasn't paying personal expenses?

Q. That is right, that were being paid for by the corporation?

(Testimony of Hans Forster.)

A. This was odds and ends that went down without my knowledge, and if not charged against me, I don't know. Those figures didn't come out, the twenty-three thousand dollars, until the accountants started to get into it, and I—what I understand, there is still some question about certain parts of it being business expense, and certain parts being personal expense. I don't know enough about it to tell you.

Q. I think you testified that through the years, you handled yourself the relations with many of your companies?

A. Quite a few of them, yes.

Q. Did you sell on credit to some extent?

A. Well, we sold—one of those large customers, like Horluck's, or Brehm, or Hi-Grade—in other words, none of them was cash. They was all credit.

Q. Well, practically all your business was credit, wasn't it; at least, monthly billing?

A. Well, of course, a lot of the fresh milk operation was, and some of it was when the accounts [2989] bought tokens off the driver milk trucks.

Q. Anyway, you had customarily to assess the credit risk of a customer, didn't you? Whether he was good for credit?

A. You mean I didn't have to assess him, you mean——

Q. (Interposing) You had to determine whether you could sell to a certain new customer on credit?

A. That is right. When he didn't pay his bill, that is when we started to get worried about it.

(Testimony of Hans Forster.)

Q. Now, if a customer was operating through a corporation, was there a different credit risk than if you sold to him individually?

A. I wouldn't know.

Q. You wouldn't know that if you had an account against a corporation, that account was good only against the assets in the corporation?

A. I never questioned anybody about it.

Q. Did you ever try to collect a bill against a corporation?

A. I never have. Maybe some of the attorneys have.

Q. But you never have?

A. Not as an individual, no.

Q. Did the bank have you guarantee the loans [2990] made to some of your corporations?

A. Yes, I think I signed, besides as president of the corporation, signed as an individual, yes.

Q. Did you know that the purpose of that was so that they could go after your individual assets if the corporation couldn't pay?

A. That isn't what they told me.

Q. What did they tell you?

A. They told me, because some of my businesses was owned personally by me and some of it was corporation, and that the whole picture would have to be tied in together.

Q. They wanted all the assets behind the loan?

A. I would think so. I would think it was because Alpine Dairy, not being a corporation.

Q. You understood, didn't you, Mr. Forster, that

(Testimony of Hans Forster.)

having property in a corporation was not the same as owning it individually?

A. Well, I understood, so far as I was concerned, where I owned all the stock in the company, it was all my own, and I understood if I—on the sole ownership of Alpine Dairy, I owned it all and I knew that I only owned 67 percent of the stock at Apex Farms, and I knew I had a half interest, or 50 percent, in Simonson and Forster, and one-third interest in Renton, and 100 [2991] percent ownership at Finstad and Utgard.

Q. And is your answer that you didn't understand that having property in a corporation was not the same as owning it individually?

A. I understood that as far as I was concerned when I owned it all, all the stock, it was all mine, and if I didn't own it, then it wasn't all mine. Maybe you can clear it up some. I don't know.

Q. No, I am just asking you to clear it up.

A. Well, I can't. I have given you the answer that I best know.

Q. I think at one time during this trial, you testified that title to certain property was in your name personally, rather than the corporation, didn't you?

A. That is right. I think this property, I think it was bought by Hans Forster, just like Alpine Dairy was.

Q. In so testifying, were you making a distinction between what you owned personally and what the corporation owned?

(Testimony of Hans Forster.)

A. Well, I won't make a distinction if I didn't own all the stock. I would say I would have some responsibility to the other stockholders, but where I owned it 100 percent, as far as I was concerned, it was Hans Forster that owned it, and there wasn't anybody [2992] else that would have anything to say about it.

Q. You understood that the corporation paid tax as if it were a separate person, didn't you?

A. I knew that there was certain tax that I had to pay, and a certain tax the Mrs. had to pay, and a certain amount of tax the corporation paid.

Q. In other words, you understood that the corporation paid taxes separate as a separate person would?

A. That is right. That is what the corporation tax was. I didn't even know there was a difference in percentage until talk about sixty-five percent and 55 percent and 38 percent. Taylor knew those percentages himself. I didn't worry about it.

Q. Your savings account, 198, was your own personal savings account, wasn't it?

A. Well, it was in my name, yes.

Q. And it was your own personal savings?

A. Well, I considered it as part of my business, just like a bank account at Alpine Dairy, or the bank account at Issaquah Creamery Company, whatever I owned solely.

Q. Haven't you previously described it as your own personal savings account?

A. Well, between Hans Forster account and

(Testimony of Hans Forster.)

194, [2993] to me it was all the same.

Q. And you loaned money from that account to Issaquah Creamery Company, didn't you?

A. That is right.

Q. And when you did that, you took a note from Issaquah Creamery Company for it?

A. That is right. Hicks Taylor made it out.

Q. So that it wasn't the same?

A. What do you mean, "It wasn't the same"? That is what I used that account for, to loan money to the different corporations that I had.

Q. You took a note from Issaquah Creamery Company to yourself? A. That is right.

Q. So your previous testimony is it was your own money from 198 that you loaned to Issaquah Creamery Company to be repaid to you?

A. To be repaid to go back into savings account, into 194.

Q. You also charged Issaquah Creamery Company interest on that loan, didn't you?

A. Well, Hicks Taylor made the note out, and he is the one that made the arrangement on it.

Q. And you collected the interest?

A. Well, he told Mr. Erickson to give me the check at the end of the year, and the interest went into [2994] 194.

Q. If the money in 198 was the property of Issaquah Creamery Company, it wouldn't have been necessary to make a loan to them on a note, would it? A. You mean 194?

Q. 198 or 194, whichever it came from.

(Testimony of Hans Forster.)

A. If it belonged to Issaquah Creamery Company?

Q. Yes. A. Well, there was some——

The Court: (Interposing) Is it 194?

Mr. Keesling: I think he means 198.

Mr. Moriarty: I think he means 198.

Q. (By Mr. LeSourd continuing): The money you took from 198 and loaned to Issaquah Creamery Company, if it had belonged to Issaquah Creamery Company, you wouldn't have had to make a note, would you?

A. It didn't all belong to them. Part of my salary checks went in there.

Q. Part of your salary checks went into 198?

A. That is right.

Q. Now, when a check came in as a business receipt to Issaquah Creamery Company, was there a difference in whether it was deposited in the Issaquah Creamery Company or in your savings account? [2995]

A. I would think so. There was two different accounts.

Q. What difference—what was the difference between the two?

A. Well, one was the account at the Issaquah Creamery Company and the other was the account of Hans Forster.

Q. In other words, if it went into the Issaquah Creamery Company, it belonged to the corporation?

A. It belonged to Hans Forster.

Q. It belonged to the corporation, didn't it?

(Testimony of Hans Forster.)

A. Well, I am the corporation.

Q. You owned the stock in the corporation?

A. That is right; I owned the corporation.

Q. If it went into account 198, it was yours without being in the corporation, wasn't it?

A. It was what?

Q. It was your property without being in the corporation?

A. It was my property, either way.

Q. You understood, did you, Mr. Forster, that the various businesses that you owned were separate organizations; businesses you owned or had an interest in?

A. Well, I knew that was—I had a certain amount [2996] of stock in certain corporations, yes.

Q. And each of these corporations were separate business corporations?

A. It was run separate, yes.

Q. I think you testified, did you, that you didn't understand the effect of sales between companies?

A. I probably did, yes.

Q. Well, what don't you understand about it?

A. Well, as far as I was concerned, it was just book work. There wasn't anything else to it. The sales would be at Issaquah Creamery Company, which I owned, and Alpine Dairy, which I owned. Certainly, it was just a transaction that the book-keeping department was making.

Q. It was just book work even though they filed separate tax returns?

(Testimony of Hans Forster.)

A. So far as I was concerned, it was just book work.

Q. It wasn't book work, the sales between Apex Farms and Issaquah Creamery Company?

A. Because I didn't own all the stock in Apex Farms.

Q. You had no trouble realizing the effect of sales between Apex and Issaquah? [2997]

A. I told you that if I owned both of the companies solely, as far as I was concerned it was just book entries that made the difference.

Q. You had no trouble realizing the effect of sales between Apex and Issaquah?

A. Well, I didn't have any trouble either way. I didn't—I don't know what you mean by "effecting a trouble". I wasn't looking for any. The troubles was coming without my looking for it.

Q. I am just trying to get the question.

A. I don't know what you are driving at, Mr. LeSourd, but I gave you an answer, as good as I know about it.

Mr. Le Sourd: It is recess time.

The Court: Ladies and Gentlemen of the Jury:

We will now take the mid-afternoon recess. The Court calls your attention to the admonition given on similar occasions, and asks that you heed the admonition given on such occasions. You may now be excused.

(Whereupon, the Jury retired from the courtroom.)

(Testimony of Hans Forster.)

(Whereupon, at 2:46 o'clock p.m. a recess was had in the within-entitled and numbered cause until 3:02 o'clock, p.m., April 1, 1954, at which time, Counsel [2998] and Defendants heretofore noted, being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Le Sourd.

Q. (By Mr. Le Sourd): Mr. Forster, at one point in your direct examination, I was a little confused as to your testimony. Did you testify that you had never asked Mr. Taylor for a statement of your net worth?

A. I think I probably asked him for a statement of my net worth because the banks asked me for it, yes.

Q. The statements that Mr. Taylor gave you of your net worth, which were given to the bank, were simply statements of the business assets from the books of these various businesses; isn't that right, except for a few other figures?

A. Well, except for a few other figures, yes.

Q. And Government Bonds is one or two other figures in addition to the business assets?

(Testimony of Hans Forster.)

A. Yes, I would think so.

Q. They did not purport to be complete net worth statements of all your assets, however, did they?

A. Well, he didn't tell me what it consisted of. He made up the statement, and that is the reason I guess Mr. Donaldson asked some additional questions when I signed the other statement.

Q. Well, this statement that you signed and gave to Mr. Donaldson from year to year that Mr. Taylor prepared did not include all of your assets?

A. I don't think it included my home, or I don't think it included the farm.

Q. It didn't include your savings account, either, did it?

A. I don't know if it included it in any one of them or not. I couldn't tell you. The ones shown to me yesterday, or the day before yesterday, I don't think had the savings account in it.

Q. Why didn't you give Mr. Taylor complete information on all of your assets to file complete net worth statements?

A. He never asked me for it. He knew I had the savings account. He knew I had both of them. He knew I had the farm. [3000]

He knew I was living in the house I had paid for.

Q. Your testimony is, I believe, you prepared financial statements of your own as to certain of your assets?

A. I didn't say I made financial statements of my own. I said I jotted down a few things in my

(Testimony of Hans Forster.)

memory of certain investments I had in certain stocks or how much money I had invested in certain companies.

Q. And Exhibit A-61 that was introduced yesterday is such a list? A. That is right, yes.

Q. This doesn't purport to be a list of all of your assets?

A. It is just what I had in my head, what I remembered.

It doesn't—it doesn't have anything to do with the statements of different companies that I remember. It has certain items that I wanted to tell Taylor about from time to time, and what I had. I don't think it had anything to do with any tie-in of any statements that Mr. Taylor made up, if that is what you mean.

Q. Well, what was your purpose in making out this list, A-61? [3001]

A. To tell Mr. Taylor about it, and letting him know what I had of different stocks, or different amounts of money I had in there, in different businesses.

Q. It was dated January 1, 1947. When was it prepared? A. On that date.

Q. On that very day? A. That is right.

Q. Was it all prepared at one time?

A. I would think so, yes.

Q. On January 1st, New Year's Day?

A. Yes, I am quite sure that is when I made it out. Maybe it was a couple of days later, but I doubt it.

(Testimony of Hans Forster.)

If I put the date on it, that is what I meant.

Q. Where were you when you prepared this?

A. I was at home.

Q. You wrote this out yourself? A. Yes.

Q. In your own handwriting?

A. That is mine, yes.

Q. How many copies did you make?

A. I didn't make no copies.

Q. No copies? [3002]

A. That is just for my own information and Taylor's information, so that when we go up to Conway that is when most of the time we talked about those different investments. He bought the same kind of stocks, and we took up a couple of hours to drive up there, and that is when we talked about it.

Q. Has there been—were there any additions or corrections or alterations of that after you prepared it on January 1, 1947?

A. I don't know if those two items, Northwest Hotel Supply, and the other item I wrote in afterwards or not; I couldn't tell you, but I don't think there was any corrections so far as this was concerned.

I think this \$400 was an addition of \$400 that I loaned to pay grocery bills up or something.

Q. Now, the bottom item, Harmer, is it? You loaned some money to a man named Harmer?

A. Yes, that is Harmer. He was——

Q. (Interposing) Let's not get into the details.

(Testimony of Hans Forster.)

A. He was a contractor out of Apex Farms. He was a driver.

Q. You made only one loan to him?

A. Well, he sold his route several times since then, but I don't know.

Q. That is in pencil, and the rest of it [3003] is apparently ink or some other type of writing.

Do you think you added that Harmer later on?

A. I think I probably put it on right after that, while I had the slip in my pocket. I carried it around until I made the other one up, and tore the other one loose. I just found this one, in one of my bureau drawers at home, and I showed it to the accountant, how I kept track of some of the items, but whenever I made up a new one, I tore the old one up.

Q. This Northwest Supply, \$5,000, do you think you put that on on January 1, 1947, or at some later date?

A. I think probably I marked that down. It is Northwest Hotel Supply.

Q. Northwest Hotel Supply.

A. That I had some stock, five thousand dollars worth of stock.

Q. When do you think you put that on the slip?

A. I think I possibly put it on there within a short while of—after I made up the rest of it. Maybe it came into my mind. I forgot to add it, to put it, into this list.

Q. Do you have a clear recollection in your mind when [3004] you made any part of this slip up?

(Testimony of Hans Forster.)

A. Yes, I am quite sure I made it up January 1st.

Q. You have a clear recollection of that?

A. Well, I can't have no clear recollection for seven years past, but most of the time, when I put the date down, I wouldn't put down January 1st if I did it January 5th. I am quite sure I made it up then.

Q. Do you have a clear recollection as to these two items at the bottom, when you might have put those on? A. No, I wouldn't.

Q. You don't know about those?

A. No, I don't know if they are added into the total, or not.

Q. Now, when did you show this A-61 to Mr. Taylor? You said you did, I believe?

A. I probably showed it to him on the way to Conway. That is when we talked about those different stocks and different items and different investments that we had—was buying the same stock from Mr. Jordan, and he probably told me that if he changed any of his stocks, or probably told me that maybe I should try to get rid of that one or get rid of some other one.

Anyway, we discussed about it and discussed it and [3005] I showed him those slips from time to time.

Q. Would that have been within the same month that you made this, or when would it have been?

A. I think so. We went up to Conway once a month, and I think I probably—I always drove the

(Testimony of Hans Forster.)

car when we went together, and I would say that I—he probably accompanied me about ninety percent of the time, nine times out of ten, something like that. That is when we talked about it, because that is when we had a lot of time to discuss things—a couple of hours drive. More than that, actually; maybe three hours going back and forth.

Q. Do you have a clear recollection of discussing this particular statement with Mr. Taylor?

A. Well, I have discussed all of the statements I made out with him, and I am sure there is no exception on that one.

Q. You have no clear recollection of discussing this particular one?

A. I don't know what you call a clear recollection. Are you going to tie me down to a date and tie me down to an exact time? It is impossible.

Q. Well, I certainly want to find out whether you are just assuming you talked to him, or whether you actually know? [3006]

A. I am not assuming that I just talked to him. I definitely have.

Q. You have talked to him as to this particular matter?

A. I talked as to that. That is why I made it out. Except for Hicks Taylor, no one else was interested in it except Hicks.

Q. Did you make it out for your own personal use?

A. I don't know what I would use it for. To kind of refresh my memory on it when I talked

(Testimony of Hans Forster.)

those things over with him, and then I drove and passed the slip over, and he would ask me about this and that, and he went over it, and he gave me the slip back.

Q. How often did you make out these slips?

A. Oh, I don't know; a couple or two or three times a year.

Q. Two or three times a year?

A. I would think so, yes.

Q. Did they look like this?

A. Just about the same size, all of them, yes. I just took one of those small scratch sheets there in the desk up at the house, and I took the one from the time before, and laid it aside, and tried to go through my head if I added anything or got rid of [3007] some of it and added it up, and I tore the old one up and put the new one in my pocket, in my billfold, and carried it around until we got together.

Q. And when you made out a new one, you tore the old one up? A. That is right.

Q. And during the year 1947, did you make out any other slips, besides this one?

A. I am sure I did. I think as long as Hicks Taylor was associated with me, I kept on making those slips up, probably clear up, including 1949 and maybe a certain part of 1950; I just happened to find this one.

Q. Did you make out the slips at any particular time of the year? A. Not necessarily, no.

Q. Just whenever you felt like it?

(Testimony of Hans Forster.)

A. That is right, yes.

Q. When would you have—or do you recall—actually making out a later one in the year 1947?

A. Well, I told you I have made them out two or three times a year, and this is the first of January, so that there couldn't have been one before; there must have been a couple of them after that.

Q. There must have been a couple of them after [3008] that, before the end of the year?

A. Before the end of the year, yes.

Q. You destroyed these when you——

A. (Interposing) Whenever I made up the new one, then I destroyed the old one; except I found this one among my papers in the desk. I don't know why I kept it.

Q. And this is the only one then in existence?

A. That is the only one in existence, except about one-half dozen photostats, I guess.

Q. Of the same one? A. Yes.

Q. Now, as a matter of fact, Mr. Forster, it is not true that you made these up several times a year, is it? A. It is true.

Q. It is true?

A. Yes. I wouldn't make the statement if it wasn't.

Q. Well, if you made these up several times a year and if you made some up later in 1947, then you wouldn't have been writing on this after you made up the new one, would you?

A. Well, I have wrote on there, either after I made that up, or maybe even a couple of days later

(Testimony of Hans Forster.)

if [3009] something came to my mind, or maybe I didn't finance Harmer or make his contract out on that record for maybe that period.

I think probably that could be checked when this Harmer incident came along.

Q. Yes, it can be checked. A. That is right.

Q. It is your statement that you put this on a few days after January 1st?

A. Well, I can't tell you when I put it down, but I know I made up two or three of them a year, and as far as the Northwest Hotel Supply amount is concerned, maybe I got it later.

Mr. Le Sourd: Mr. Griffin, could I get the record of your bank draft purchases from the Washington State Bank by Mr. Forster? I don't think it has been admitted. I have a photostat we can use.

Mr. Brody: Is that the Government photostat?

(Whereupon, attorneys conferred at the defense table.)

The Reporter: I can't hear.

The Court: Do you want this for the record?

Mr. Le Sourd: No.

Mr. Moriarty: We don't desire to have it in the record, your Honor. [3010]

Mr. Griffin: You obtained this from the Government, I understand?

Mr. Le Sourd: Yes. I think we might have this identified. I will offer it as an admission of the defendant Hans Forster prepared by his accountants.

The Clerk: Defendants' Exhibit No. A-63 marked for identification.

(Testimony of Hans Forster.)

(Defendants' Exhibit No. A-63 marked for identification.)

Mr. Le Sourd: Does the Government wish to see it?

Mr. Patten: No, we have a copy.

Mr. Keesling: I object to it only insofar as a portion of it is in 1940. It starts with 1940. Only to that portion which is outside the Indictment years.

Mr. Le Sourd: I will limit it, your Honor, to only the portion within the Indictment years.

Mr. Keesling: Then I will have no objection.

The Court: It is being identified now, I understand, or you are about to.

Mr. Griffin: I don't have any idea if the witness can identify it. I am perfectly willing to take counsel's statement that the Government provided this to the counsel for Mr. Taylor. [3011]

Mr. Moriarty: From the account there.

Mr. Griffin: In cooperation with the Government. It doesn't need identification, as far as I am concerned, being a photostat of an original.

The Court: As I understand, Mr. Griffin, you say it needs no identification?

Mr. Griffin: No, your Honor.

The Court: Are you offering it?

Mr. Le Sourd: Yes, your Honor, I am offering it as an admission.

The Court: Any objection?

Mr. Griffin: I am not objecting to it at all. I

(Testimony of Hans Forster.)

do object to counsel's statement that he is offering it as an admission of something.

Mr. Le Sourd: I will withdraw the statement. I was merely explaining the basis.

Mr. Griffin: I have no objection to it.

Mr. Keesling: I think the first page is entirely outside the period.

The Court: Is it one document?

Mr. Le Sourd: It is a stapled document, your Honor.

Mr. Cox: The title of the document, if the Court please, includes the entire ten-year period. But the offer is made only to the year 1945 through 1949.

The Court: A-63 have been offered, there being no objection to that portion covered by the Indictment, it will be admitted as to that period only.

(Defendants' Exhibit No. A-63 admitted in evidence.)

Mr. Moriarty: At this time, may I make the statement, so that there will be no misunderstanding, that the Government's records have been available at all times for their inspection.

Mr. Cox: And it was at our request that we take photostats of those given to the Government by Mr. Forster, and the only reason was that the Court preferred photostatic copies, black on white. Since ours was the second run made, it was black on white. We, therefore, exchanged copies with the Government in case they wished to offer it.

Mr. Griffin: I thought I wasn't objecting.

(Testimony of Hans Forster.)

The Court: These statements are for the record. You may proceed.

Mr. Le Sourd: May I proceed, your Honor?

The Court: Yes.

Q. (By Mr. Le Sourd): Referring, Mr. Forster, to Defendants' Exhibit A-63, I will call your attention to an item [3013] dated October 8, 1947, Charles M. Harmer, \$5,215.45. A. Yes?

Q. And this is an exhibit showing bank draft purchased from the Washington State Bank, Issaquah, by yourself? A. That is right.

Q. From that, can you tell us when you made this loan to Mr. Harmer?

A. It probably was at that time.

Mr. Moriarty: Harmer?

Mr. Le Sourd: Harmer, H-a-r-m-e-r (spelling).

A. (Continuing) When I got the cashier's check.

Q. (By Mr. Le Sourd): That was in October, 1945? A. That is right.

Q. Well, now, if you were making several of these slips a year, how did it come about that we find written on this slip for January 1, 1947, the item of Harmer?

A. Well, I made several slips every year. I don't know at what intervals or what months, but most of the time when I probably had some additional contracts, that is when I tore the old ones up. I know that I made not just one a year. I made some up [3014] at intervals.

Q. Here we have writing on this that was obviously after October, 1947, isn't it?

(Testimony of Hans Forster.)

Mr. Griffin: Objected to as argumentative.

The Court: It would appear to be argumentative. Objection sustained.

Q. (By Mr. Le Sourd continuing): Do you have any other explanation of why you find this word "Harmer" and this amount on the January 1, 1947 slip?

A. No, I wrote it—this is January 1, 1947—it is October and this is January. I wrote it in in pencil sometime afterwards.

Q. And this is October, 1947, and that is January—

A. (Interposing) That is right.

Q. (Continuing) —1947?

A. That is why I said Harmer contract, I don't think, is added in here. I think this is without, even, Northwest Hotel Supply for five thousand dollars. I didn't have—make it out January 1, or July 1. Whenever I felt like it, that is when I made it up. Maybe I didn't make any more from January to October. Maybe two from October. It all depends if new contracts is going out or new stocks coming in. [3015]

Q. I call your attention to another item on Defendants' Exhibit A-63, dated February 14, 1947, Northwest Hotel Supply, Incorporated, five thousand dollars. Is that the same item we find written in ink on this slip for January 1st?

A. That is right. That was written in afterwards.

Q. But it wasn't—

(Testimony of Hans Forster.)

A. (Interposing) Right after I bought the stock.

Q. But it wasn't a few days afterwards?

A. You are trying to have me go back seven years and try to have me give you the time I did it. It wasn't added in, so I put it in afterwards.

Q. All I am trying to do is test the accuracy of your statement.

A. My statement is accurate. I know I made two or three slips a year. I don't know the date. It was for my own information, and to give to Hicks Taylor whenever I had some additional transaction. That is when I marked it down and carried it around in my pocket.

Q. Handing you Plaintiff's Exhibit 124, which is a typed financial statement for March 31, 1947, for Hans Forster, and Defendants' Exhibit A-61 which is the [3016] January 1, 1947 handwritten statement.

Mr. Forster asked you about these two statements a day or two ago?

Mr. Cox: Mr. Griffin.

Mr. Le Sourd: Excuse me.

Q. (By Mr. Le Sourd continuing): Mr. Griffin asked you about these a day or two ago, didn't he?

A. Yes.

Q. And he had you read the total net worth from each?

A. Well, I didn't read all of them down. He just pointed out a few items.

(Testimony of Hans Forster.)

Q. And he pointed out that the totals had a relationship of some kind?

A. He pointed out that the totals didn't have any relationship.

Q. So that the two slips cover in a good part different items, don't they?

A. The two statements, there is no question about it. This information wasn't taken off from here. This is the item that I told you I remembered in my head for the investments I had in the different companies, or different loans, and different money in the Washington State Bank savings account, and stocks [3017] and——

Q. (Interposing) What, if any, record or information did you have available when you prepared A-61?

A. I had the slip from the previous times. I don't know if I had my savings books on hand or not. I probably had a few slips in my pocket, or some information in my notebook that I jotted down and that is where I got some of the information from.

Q. Referring you to A-61, the item for Apex Farms, you show \$110,000, don't you?

A. That is right.

Q. And referring to the same item in Mr. Taylor's typed statement for Apex Farms, what does it show?

A. \$60,749.76.

Q. Where did you get the figure for Apex Farms?

(Testimony of Hans Forster.)

A. It is the amount of money I put into Apex Farms.

Q. Were you keeping a record of it?

A. That is right. I kept those slips. I marked it down, and when I put another ten thousand or twenty-five thousand in there, I marked it down. That is when I made the slips out. It had nothing to [3018] do with the statement Taylor made out. I made it out myself and showed it to him on those intervals for the amount of money I had in certain companies and as of that time, I had \$110,000 in Apex Farms.

Q. Now, Pickering Mortgage is on A-61, isn't it?

A. That is right.

Q. Where did you get the figure for that?

A. I took the Pickering Mortgage of the date from the slip—I got the slip before, and I knew the payments that he was making, and I deducted the payments. This is not up to one cent of a dollar correct figure. I just made it for my own information and Hicks Taylor's information and carried it around in my pocketbook until I made up a new one.

Q. Arctic Gardens, what figure do you have there for that?

A. Twelve thousand five hundred dollars.

Q. Now, your investment in Arctic Gardens was only twenty-four hundred dollars, wasn't it?

A. No, my investment in Arctic Gardens must have been twelve thousand five hundred dollars. Otherwise, I wouldn't put it down.

(Testimony of Hans Forster.)

Q. That is different from the figure on Mr. Taylor's report, isn't it? [3019]

A. Well, he got Arctic Gardens, fifty percent, \$18,000; but that probably was—I can't see how it could be fifty percent. I know we never made any money. I don't know where he got the figure, but I think the original investment in Arctic Gardens was \$12,500.

Q. And you were retaining a record of that investment, were you?

A. Here is the record I kept.

Q. And you kept these slips from period to period as a record for yourself of what your investments were?

A. Not the investments; the amount of money I put in different businesses.

As it happened, that Arctic Gardens wasn't worth that kind of money, we lost some money in there, and probably some of the items—Apex Farms, for instance, I put \$110,000 into it, but according to Mr. Taylor 67 percent was only worth \$60,000 so I probably lost \$50,000 there. I made this up just for my own record. I didn't make any comparison with a statement, and after I made it up, I showed it to him and we discussed it.

Q. I believe you testified, Mr. Forster, that Mr. Taylor should have reported the income that was [3020] going into your account 198 because you had told him about it?

A. Well, he knew about my account 198 and he knew about the source of account 198 and as far

(Testimony of Hans Forster.)

as I knew, that he was reporting it. He never told me he didn't.

Q. In what way did you give him the figures that he was supposed to report going into 198?

A. Well, I gave him the figures of the account at various times, of the balance in the account.

Q. Well, in other words, what you gave him were slips like this A-61?

A. That is right. I didn't—I showed it to him and he jotted down some notes and he asked me about—when he came up to the house, about the interest that was marked down in the different savings bank books and different incomes, and that is what I gave him.

Q. Was there any other way that you gave him information on 198?

A. Well, the information that he asked me, whenever he asked me for it.

Q. Well, what else did he ask you for; what else did you give him, if anything?

A. Well, he got information when we built the [3021] ice cream plant that that \$100,000 was in there. He got information when Mr. Hall wanted to buy that piece of property in Renton.

Q. You mean by that, that at those times there was a discussion of the savings account, and perhaps some mention of the amount in the account?

A. It wasn't "perhaps some mention"; it was mentioned.

Q. Well, whatever it was. Did you give him any

(Testimony of Hans Forster.)

information on 198 other than the balance in the account as shown in these slips?

A. The balance in the accounts and the interest that was marked down at six months' periods.

Q. That is the interest on the savings account itself? A. That is right, yes.

Q. But other than giving him the balance in the account like you have on that slip, or the interest, that was all you gave him out of 198?

A. If he asked me some other questions, I probably gave him some other ones. I just recollect that kind of an information.

Q. You don't recollect any other items?

A. No, I don't.

Q. Now, the figure for the Washington State [3022] Savings Account, Bank Account 198, there is the balance of the account, is it, on January 1, 1947?

A. Well, that is what I got down, \$62,602.

Q. That would be the balance on that date, approximately, anyway?

A. I would think so. I don't know if the interest was added or not, or if it wasn't.

Q. I am not asking you exactly; just generally what that reports? A. Yes.

Q. And each of these statements that you say you showed to Taylor would show similar balances in the account? A. Yes.

Q. And it is your testimony that you believed that Mr. Taylor was reporting the business receipts which you received from Issaquah and Alpine—the

(Testimony of Hans Forster.)

business receipts that you received from Issaquah and Alpine and put into 198—that Mr. Taylor was reporting that by reason of this information you gave him? A. Not necessarily.

Q. Not necessarily?

A. No. I don't know if those receipts were reported on the books or not. I don't know if they had them on the books or not, but he knew the amount of [3023] money I had in those banks.

Q. And from that you felt that he was reporting it?

A. No; nobody ever told me that those receipts wasn't reported. The only question that ever come up of the amount was on the quota deal on that ice cream set-up, but nobody came and told me that they didn't have—didn't keep any record of it, and I don't know what records Hicks Taylor got from it. I can't tell you.

Q. I am asking you why you thought that Hicks Taylor was reporting these business receipts, whether it was because you showed him these figures on 198?

A. No; as far as I knew, he knew everything that was going on. He knew everything—how the thing was handled, and he knew about my accounts.

If he wanted any extra information, I certainly was willing to give it to him.

Q. Handing you Plaintiff's Exhibit 55, Mr. Forster, which is a transcript of savings account 198, I will ask you to give me the final balance for

(Testimony of Hans Forster.)

the year 1948, or the opening balance for 1949; either one?

A. You mean December 29, 1948?

Q. Yes, I think that is the last one.

A. \$116,953.08. [3024]

Q. And I will ask you to give me the final balance for the year 1949? A. \$93,974.98.

Q. So, in the year 1949, the balance in your account dropped, did it not? A. That is right.

Mr. Griffin: May I inquire, did you ask him the balance to the nearest date, December, 1946?

Mr. Le Sourd: No; December 1948.

Mr. Griffin: All right.

Mr. Le Sourd: And January 1, 1949, and end of the year, 1949.

Mr. Griffin: All right.

Q. (By Mr. Le Sourd). Exhibits 279 and 280, introduced in this case, Mr. Forster, show that you deposited a substantial amount in 198, in the year 1949 of business receipts. That is right, isn't it?

A. Well, what do you mean, "here"?

Q. No; by the evidence in this case, you know, don't you, that the evidence in this case shows a substantial amount of business receipts which you deposited in 198 in 1949?

A. I wouldn't know the figure. You said "a substantial amount." I suppose that is what it is. [3025]

Q. Well, a figure of \$32,500, I believe.

Mr. Le Sourd: May we have 279 and 280?

(Whereupon, Exhibits were handed to Mr. Le Sourd by the Clerk.)

(Testimony of Hans Forster.)

Q. (By Mr. Le Sourd continuing): Rather than take the time, Mr. Forster, to have you total these up, I will just ask you to read some of the items. It is Exhibit 280, showing Issaquah Creamery Company net income, and I will ask you to read item B-1; that is for the year 1949.

A. Checks payable to Issaquah Creamery Company not recorded in the books of the corporation, deposited in Hans Forster's personal savings account 198, \$18,583.11.

Q. And I will ask you to examine Exhibit 279, which is a computation of unrecorded income for yourself personally for the year 1949, and for the year—we will ask you to read "E"—to read "a", small "a", for the year 1949.

A. Cash discount paid to Hans Forster personally, by Time Oil Company, \$2,562.10.

Q. Now, let me ask you, Mr. Forster, how you expected Mr. Taylor, assuming that you showed him the balance in this savings account at the end of 1948 and [3026] the balance at the end of 1949 showing a reduction in the balance, how did you expect him to get these items of income and put them in your return?

A. I didn't expect him to get it off of the slip. He knew the Time cash discount. He knew how much I was getting a month. That was discussed many times.

Q. Then your evidence is now that as to these business receipts, that you did not give Mr. Taylor

(Testimony of Hans Forster.)

any information from which he could have entered them in your return as to the amounts?

Mr. Griffin: Of course, that is not his testimony.

A. That isn't what I told you.

Q. (By Mr. Le Sourd): What is your testimony on that?

A. My testimony is that Hicks Taylor knew about all the items that went into Account 198. I don't know if he kept track of it before, but those items were discussed—like this check from Apex Farms—they were discussed like the Time Oil Company was discussed.

Q. You didn't keep track of these items?

A. No, I didn't keep track of these items, but they all went into 198 and didn't go any other place. [3027]

Q. You didn't, yourself, give him any information as to the amounts, did you?

A. I told him the monthly amount of Time Oil Company.

Q. How about the items of business receipts?

A. Well, checks from Apex Farms, we showed him those checks when he came to Issaquah. He knew what those things were.

Q. And how about all these other business receipts: Finstad and Utgard, Renton Ice, Casein Sales? Did you give him figures on any of those?

A. Mr. Taylor knew about the casein sales.

Q. Did you give him the figures on any of those? A. I showed him the checks.

(Testimony of Hans Forster.)

Q. You showed him each of those checks; there was two of them?

A. I definitely know that I showed him the first one, and I expected him, after he knew the whole situation, and told me not to worry about it, that he had a certain way of picking them up if he didn't get the figures from the records. I don't know if he got them from the records or not.

Q. He didn't get them from you, did he?

A. Which figures? The individual figures? I [3028] never kept track.

Q. The individual receipts?

A. He got it from Time Oil Company, and he got it on the checks from Apex Farms. I can't recall just exactly each individual item.

Q. Were you there when he got it from the Time Oil Company?

A. No, but I gave it to him. I told him the amount. He knew about the original arrangement, and he knew how much it amounted to, and he knew where the money went.

Q. Did you give him the figures on the receipts from Finstad and Utgard?

A. What do you mean, that gasoline? I wouldn't know if he got them or not, but I definitely know about those other things. In the first place, he was accountant and took care of Finstad and Utgard books, and the same way with Apex Farms, and the same way with Renton. That isn't only that he was the one that told me if I made out checks and went into a new venture where to make the check out to.

(Testimony of Hans Forster.)

He knew I had money in account 198. It was no secret. I wasn't holding anything back from anybody.

Q. You wrote checks on Issaquah Creamery Company and Alpine Dairy both, didn't you, yourself? [3029]

A. I never wrote any Issaquah Creamery Company checks. I signed some Issaquah Creamery Company checks, but I never wrote any.

Q. You wrote Alpine Dairy checks?

A. Just the pocket checks that I carried around, counter checks at Peoples Bank.

Q. And you withdrew money from your savings account?

A. I would say I did, yes, at times.

Q. Who kept track of the balance?

A. I kept track of the balance in that slip I made out.

Q. But you wouldn't know what account to draw on without Mr. Taylor from down in Seattle telling you?

A. I wouldn't know what account to draw on when you draw out sums of ten, twenty-five or fifty thousand dollars.

I am not talking about five hundred dollars, or two hundred fifty dollars; but any big item, before I drew on it, I talked to Hicks Taylor about it, and the loans to Issaquah Creamery Company to buy butter. He knew I couldn't get it out of the ground. Hicks Taylor knew about every transaction I had.

(Testimony of Hans Forster.)

Q. And Hicks Taylor had power to cut your [3030] salary, did he?

A. I don't know if he had power or not. He cut it.

Q. And he had power to fix his own salary?

A. That is right.

Q. And he told you what account to draw your money from?

A. He told me what account to draw the money from when we went into Finstad and Utgard. And he told me what account to draw the money from when we bought out Blue Ribbon Dairy and Apex Farms.

Q. Is there anything in your business he didn't run?

A. Well, I think as far as the finances part is concerned, he knew a devil of a lot more about it than I did.

Q. You got a pretty good man for fifty dollars a month for each company, didn't you?

A. I told you before if he wanted more money he could have got it.

Q. He had no interest in your enterprises?

Mr. Griffin: I object as repetitious. The witness has answered what it cost him to date.

The Court: I think it is repetitious, is it not?

Mr. Le Sourd: I think I have asked him this before, your Honor.

Q. (By Mr. Le Sourd continuing): You could have terminated his services at any time, couldn't you?

(Testimony of Hans Forster.)

A. So could he. I wish I did, now.

Q. I imagine he wishes so, too.

A. I don't know which is going to be hurt worse. I am losing my business because they want to put me into jail after I built the business up after thirty years' time. I think I am the one getting hurt, and he is the one that got me in the mess in the first place.

Q. Maybe you are the one that got him in the mess?

A. I don't know; he had a devil of a lot more business experience than I did.

Mr. Le Sourd: 251, please.

(Whereupon, exhibit was handed to Mr. Le Sourd by the Clerk.)

Q. (By Mr. Le Sourd): On Finstad and Utgard, Mr. Forster, you testified that Mr. Taylor told you what account to draw the checks on?

A. Hicks Taylor told me what account to draw [3032] the checks on that made the original purchase of Finstad and Utgard. I never drew any checks on Finstad and Utgard except the original purchase price, and he told me where to draw it from, either Issaquah Creamery Company or Alpine Dairy, or my own savings account. I don't even know where it was paid from, but it was under his instructions, and the amount that I have to pay.

Q. Well, those were the checks you drew in 1943, when you first went in; is that right?

A. That is right, in 1943, and I don't know if some of them—in order to finish up the whole forty-

(Testimony of Hans Forster.)

thousand-dollar deal, I think that it extended over a period of over a year, over twelve months. I can't just tell you exactly what the deal was. I knew that the down payment was one-third and I think another one-third in six months, and I think another one-third the year after that.

I am not too positive.

Q. Do you recall what account he told you to pay it from?

A. No, I don't, but whatever account he told me to draw it on, he told me to draw the checks on it so that I can't tell you which account it was.

Q. And whatever he told you to begin with, did [3033] he ever tell you to change?

A. Say that again. I didn't quite get it.

Q. Did he tell you one account and you followed that advice, or did you call him up several times and ask him about different accounts to pay it out of, or what happened?

A. Well, whatever——

Mr. Griffin: (Interposing) Are you talking about Finstad and Utgard?

Mr. Le Sourd: Still talking about the same thing, Mr. Griffin.

A. (Continuing) Whatever account he told me to pay it from, that is what I did.

Q. (By Mr. Le Sourd): Well, my question is whether you talked to him about it more than once?

A. I wouldn't know. Maybe I talked to him a couple of times. We was working the deal out together, so I am sure we had conversations.

(Testimony of Hans Forster.)

Q. Well, your testimony on this line then is based on just being sure that you had conversations?

A. I am positive that he told me to draw the checks from the accounts in order to make the payments and what accounts to draw them on.

Q. The first checks were drawn on Alpine [3034] Dairy, and then you made payments by withdrawal from your savings account, and then you made some payments, apparently, to Finstad and Utgard itself. Each time did you ask Mr. Taylor?

A. Well, I think each time it was under his instructions. I didn't even ask him. I am sure that the Finstad one was, and the other two he told me where to draw it from.

Q. And he could instruct you as to how to draw your checks and where you drew it from?

A. Well, he certainly did.

Mr. Le Sourd: This is a good stopping point, if the Court wishes. [3035]

* * * * *

HANS FORSTER

upon being recalled as a witness for and on behalf of the Defendant, Hans Forster, and having been previously duly sworn, testified as follows:

Cross Examination (continued)

Q. (By Mr. Le Sourd): Mr. Forster, do you remember Mr. Taylor coming out to Issaquah the latter part of January, 1950, to work up the figures for the year 1949? A. Yes.

(Testimony of Hans Forster.)

Q. This was on a Saturday, wasn't it?

A. That is when he came out most of the time, on Saturdays, yes.

Q. Mr. Erickson was there also, wasn't he?

A. That is right.

Q. And during the day on that day Mr. Taylor brought in to you figures for the annual profit for Issaquah Creamery for the year 1949?

A. He brought in the figures for the month of December, the approximate figures for the month of December, 1949.

Q. Now, I understood on your previous examination, either by Mr. Moriarty or Mr. Griffin, that you said that he brought in figures for the year 1949 and [3045] you took exception to them because they were three times as high as the year 1948?

A. Well, we had the November figures, and then we had—he gave me the figures at that time for the month of December. He never finished up any yearly statement out at Issaquah. He always took and he gave me a rough guess of what the month of December was doing, and that was after we had a loss of close to ten thousand dollars in November and he talked of the profit of twenty-five thousand dollars in December and I told him it just couldn't be.

Q. Mr. Forster, each month when Mr. Taylor gave you the figures, it was the figure for the year to that date, wasn't it?

A. After he sent me the statement, it was the year to that date. The figures he gave me out at

(Testimony of Hans Forster.)

Issaquah when he went over it, when he worked on the books, he just gave me a rough draft of approximately what it looked like. He didn't say "Well, up to date, the profits are so much."

Q. That is what he said?

A. No, I say, he didn't say "up to date."

Q. Then how did you compare them with the year 1948?

A. Because we had the figures there as of November, [3046] with the loss of November, and the net profit of twenty-five thousand dollars in December, and I told him it just couldn't be correct, and I think he showed something like \$127,000 in the total amount.

Q. You think that the figure he gave you then for the year 1949 was \$127,000?

A. I think that is what he talked about, yes.

Q. Isn't it a fact that what he showed you were figures for the year 1949 of about \$101,000?

A. No, he told me it was a figure of around \$25,000 for the month of December, and from what I recollect of the figure, it ran over the \$100,000 figure, what he gave me, and I told him it just couldn't be, because I told him to check back on the books for the year before and he had the books along and had the sales, and, as I remember, the sales was a little bit, just a little bit higher in 1949, a small percentage of what it was in 1948 and I told him as far as the figures was concerned, that it couldn't be, that kind of a profit. In the first place, I couldn't see the December figure of twenty-

(Testimony of Hans Forster.)

five thousand dollars after we lost nine or ten thousand dollars in the month of November, and I think that was the conversation.

Q. Mr. Forster, haven't you previously stated [3047] statements to the Agents inconsistently with the statement now that you got figures for the month of December?

A. As far as making these statements—inconsistencies of these statements I am making now—the statements I am making now is just as I remember it, and, if I made any other statement before, it was certainly as I remembered it then.

Q. Isn't it a fact, Mr. Forster, that Mr. Taylor never worked up separate figures for December, but always simply for the year-end?

A. That is correct. I very seldom got a December statement except he always did tell me—gave me a rough figure out at Issaquah of what the month of December looked like. Not only at Issaquah, but the same thing at Alpine or Alpine Ice Cream.

Q. Isn't it true they gave you that figure or you got the figure by simply comparing his year-end figure with the end of November?

A. You will have to repeat that. I don't quite follow you, Mr. Le Sourd.

Q. Well, Mr. Forster, what he did when he came out in January of each year was to work up the figures for the entire previous year, wasn't it?

A. Oh, no. He worked out the figures in [3048] his own office, and he never worked it out at Issa-

(Testimony of Hans Forster.)

quah. He couldn't have done it. He said, "This is approximate. I have to make some adjustment." I don't know what the adjustment was. Whatever adjustment he had to make, he never finished it up out in Issaquah in any year.

Q. Did Mr. Taylor follow the same practice, Mr. Forster, with regard to Alpine Dairy information as with Issaquah Creamery, as far as giving you statements? A. I would think so, yes.

Q. Referring you to Defendants' Exhibit A-62 and the testimony we previously referred to on March 8, 1951, here in the Court House in the interview with Mr. Marx and Mr. Eppler, I will ask you if you were asked this question and made this answer:

Mr. Griffin: Question?

Mr. Le Sourd: 61.

Q. (By Mr. Le Sourd continuing): "Question: Did you ever examine the profit and loss statement for Alpine Dairy attached to your income tax return for 1949?"

"Answer: I never seen a profit and loss statement as far as the end of the year [3049] statements are concerned. As I remember, Taylor wrote just about all of them and gave me profit and loss statements, including November and then he would try to draw November and December together, and he always said it was too much work involved to try to make out the profit and loss statement and the year-end statement at the same time, so that,

(Testimony of Hans Forster.)

as far as I remember, we never had any profit and loss statement as of December 31st."

Did you make that answer to that question?

A. That is right, and it is still so. I haven't—

Q. (Interposing) That is correct, is it?

A. That is correct, yes. He never mailed me a statement, if that is what you mean. He always told me when he was out there, not only in December but any other month, if I happened to be present, and I tried to be present just about every time he was there, he gave me a rough draft of what the profit or the loss was for the previous month, and then afterwards, he took it in to Seattle, and then probably a week or ten days later, he mailed me out a statement, and I [3050] never got the month of December statement separate, and I never got the year-end statement until he got through working out the tax, the income tax set-up.

Q. The thing you were interested in when he was out there at the end of January was the profit for the year 1949, wasn't it?

A. No, I was interested in the profit for the month of December.

Q. It was the profit for the year?

A. No, I was interested in the profit for the month of December.

Q. It was the profit for the year that you objected to, wasn't it?

A. That is right, yes, and I objected to the profit for the month of December because it moved up to twenty-five thousand dollars, and in Novem-

(Testimony of Hans Forster.)

ber he showed a loss of nine thousand dollars, and I told him I couldn't see it, and for him to try to go ahead and take a look at the figures.

Q. But it was a profit for the year 1949 that you said was three times that of 1948?

A. Well, we had a conversation about it and Mr. Taylor went in and tried to compare sales, and he said as far as he could see now, he couldn't see where any mistake was made, so he would have to check it, and that [3051] is the last I would hear from him.

Q. And you objected to this pretty strongly, didn't you?

A. I don't know what you mean, "strongly." I talked to him for at least twenty years, and I didn't object any more than any other item I didn't figure he was correct on.

Q. Didn't you even say something about getting another accountant?

A. No, of course not.

Q. Did Mr. Taylor have a work sheet with him when he talked to you?

A. He had whatever he worked on. I don't know what part of the books it was. I know we discussed sales for 1949 and then we discussed sales for 1948 to try to make comparison.

Q. Mr. Taylor told you at the time that if there was any error, it was not in his figures, but must be some error in Erickson's journals, didn't he?

A. He didn't say anything about Erickson's

(Testimony of Hans Forster.)

journals, or his ledger, or any other book, Mr. Le Sourd.

Q. When he left, Mr. Forster, he told you that if you and Erickson found any errors had been made, why, he would correct his figures to the correct figures, didn't he? [3052]

A. He never said such a thing. He knew that Erickson and I—that I never looked at Erickson's books, and Erickson never told me about any part of his books. The fellows that worked on the books was Taylor and Harold Erickson and Mrs. Wilcox or Mr. Bezeau. I don't know why he would make a statement like that.

Q. It was you who objected to the profit figure?

A. I wouldn't object if he came back and said that was the profit, that is the way it would have been. I just couldn't see any relationship between the profit of the previous year and I couldn't see any relationship of profit as for December against November.

Q. I believe you testified previously, either on direct, I think, or on Mr. Moriarty's examination that you heard nothing further about this matter until after this investigation started?

A. That is correct.

Q. Did you not have another discussion with Mr. Taylor about it? A. No.

Q. When you signed the income tax return, didn't you talk about it? [3053] A. No.

Q. Didn't you examine the return to see what the profit figure was that was shown in it?

(Testimony of Hans Forster.)

A. I didn't examine that one any more than I did the one we made out for the last twenty years.

Q. Did you ask Mr. Taylor if any changes had been made from the profit he showed you at the end of January? A. No.

Q. Well, after you had objected to the profit that Taylor showed at the end of January, you say now that you signed that return without even inquiring whether the same profit was shown in it?

A. I didn't even know if he—if I signed it two months later or three months later, or if we got an extension. He just called me in and to bring a check along and to come and sign the return, and this wasn't the first time that some of these statements were off that he changed the figures on, and it wasn't only as far as I was concerned, at Issaquah Creamery. Oscar Simsonson had the same trouble with him, or the same thing at Conway, and the same thing at Renton.

At one time, he said, "Well, there was a change between Alpine Dairy and Issaquah Creamery Company", or "My sister made a mistake in typing it up." [3054]

We have had some controversies before on the deal, that it didn't look right to me, and most of the time he had an explanation for it. I didn't question the sincerity, or why he made any changes. As far as I was concerned, if he said, "That is the way it is," that was good enough for me.

Q. And your testimony is that you signed this return without even knowing whether the profit

(Testimony of Hans Forster.)

shown was the one that you had taken exception to, or some other?

A. I didn't know if he changed the profit at Alpine or if he changed the profit at Issaquah.

That is the figure he gave me, the return to sign, and that is what I signed, and he told me how much of a check to bring in, and that is what we paid.

Q. Now, the fact is, isn't it, Mr. Forster, that Mr. Taylor 'phoned you in March and asked if he should go ahead with his original figures, and you said, "No," that there were changes to be made, and to get in touch with Erickson?

A. That is not the truth.

Q. And the fact is also, isn't it, Mr. Forster, that when you signed the return, Mr. Taylor called your attention to the corrections by Erickson and that [3055] it was up to you and Erickson to substantiate it?

A. That is not so. I don't think in all those years that I knew Taylor that he called me up and changed figures over the telephone.

Q. But with regard to Renton Ice and Ice Cream Company, Mr. Forster, and acquiring that business, as I understand it, you stayed in the background while Baskett and Schneider negotiated with Mr. Williams?

A. That is right, until the time came along after I found out they needed some capital. They didn't talk to me until after they talked to him.

I think Baskett started it, and then he got Schneider interested, and when it looked apparent

(Testimony of Hans Forster.)

that they needed some money, as far as going in with it, Mr. Baskett talked to me about what I thought about the Renton deal, but at that time, he didn't ask me to come in, and I encouraged him, too. I thought I might get an ice cream account out of it. I knew Cal for twenty-five years.

Q. The reason you stayed in the background was because you knew Mr. Williams wouldn't sell if he knew you were connected with it?

A. Well, that was Mr. Baskett's idea. I never tried to buy the business in the first place from Mr. Williams, but when we first went in the ice cream business [3056] at Issaquah, Mr. Williams had seventy-five percent of the ice cream business in Issaquah, and in the Upper Valley. Naturally, when we started, and being a local concern, we got that business, and from that time on, he wasn't too good a friend of mine.

Q. Also, didn't you have a competitive problem to think about down in Renton as far as having your name connected with this business?

A. Oh, I think to a certain extent we was selling ice cream in Renton, I think from out of—I don't think it was in there from Issaquah, but I think we was out in there from Alpine. I am not too sure yet, but that wasn't the reason.

Q. The main reason was Mr. Williams?

A. Well, anyway, that is the feeling Mr. Baskett had, and after Baskett bought it out and Williams found it out through Arden Farms, him and I were good friends until he passed away. He absolutely—

(Testimony of Hans Forster.)

it was just the idea that Mr. Baskett had, that was all, but as far as I was concerned, it didn't mean anything to me. If that is the way they felt, it was O.K. for me to go ahead on that kind of a basis.

Q. Mr. Taylor's first contact with the Renton matter was when you asked him to attend a meeting at Mr. Wettrick's office, wasn't it? [3057]

A. I would think so, yes. I think we talked about it before, Mr. Taylor and I.

Q. That is the first time you did?

A. That is probably the first thing he did except him and I having conversations about it, as far as coming into the situation, and to go ahead and take over the books.

Q. Were you there at the meeting at Mr. Wettrick's office? A. That is right.

Q. And Mr. Wettrick organized the corporation, did he, of Renton Ice?

A. I don't know if it was a corporation, or if it was just the transfer, but Mr. Wettrick was there.

Q. Whatever was done, Mr. Wettrick did it in that respect? A. I would think so.

Q. Mr. Taylor received a few qualifying shares which he turned over to you, didn't he?

A. If that is what he says, I think that is what it was. I don't know if he needed qualifying shares. I can't recall it.

Q. Mr. Forster, there has been some testimony here about a few shares of stock that were issued in Mr. Taylor's name. It is my understanding that

(Testimony of Hans Forster.)

those [3058] were simply issued to him as qualifying shares and turned over to you?

A. I would think so.

Q. Mr. Taylor owned no stock on his own account, did he?

A. He was no stockholder in Renton Ice, as far as I was concerned.

Q. Now, Renton Ice and Ice Cream started business in the early fall of 1942, didn't it?

A. Well, I couldn't tell whether it was 1942 or early 1943. You got the dates there, so that is all right.

Q. You heard Mr. Schneider's testimony here, did you? A. Yes.

Q. (Continuing) ——at the trial.

Do you recollect Mr. Schneider testifying that the corporate meeting was held September 30, 1942, at which the salaries were fixed for Baskett and Schneider?

A. That is what he testified to, I think, yes.

Q. And do you recall his testifying that you were present? A. Yes.

Q. Were you present at that meeting? [3059]

A. I couldn't—if I signed any papers, I couldn't recall. I couldn't go back twelve years and tell if I was at that meeting or some other meeting.

Q. You were present, weren't you, at the meeting when the salaries were fixed, whatever the date was?

A. I would think so, unless I was out of town

(Testimony of Hans Forster.)

or detained and couldn't go. I can't swear to it that I was or wasn't at the meeting.

Q. Don't you have a clear recollection of being there when the salaries were determined?

A. I haven't got no clear recollection for twelve years back if I was there at a meeting in Renton or not, if that is what you mean, that it was held in Renton?

Q. That is right; that is my understanding.

You have a very clear recollection, as I understand it, of the discussions on Finstad and Utgard salaries?

A. No; because I had one man that I talked to, and he was selling out his stock. He was selling his business and in order to retain him, I had to make a deal with him. That wasn't the same way. Renton, as far as I was concerned, between Mr. Baskett and Mr. Schneider, they had controlling interest together, and I looked to them to run it. It was a different deal. [3060]

I owned 100 percent in Finstad and Utgard. I didn't know any producers up there. Mr. Egeness had been there for years. It was an absolutely different matter of trying to remember it.

Q. You had a clear recollection of the Simonson salary, at the Simonson and Forster?

A. That is right, because Mr. Taylor is the one that told me about Oscar raising his salary, but even then, I told you I didn't know if Oscar was getting four hundred and raised to five hundred, or five hundred and raised to six hundred. I know he raised

(Testimony of Hans Forster.)

it one hundred dollars without talking to me about it, and that is my recollection.

I can't tell you how Mr. Schneider or Mr. Baskett started out, and how much money they got, unless I have a chance to look at the records. It was 12 years ago, and impossible for me to remember that far back.

Q. Then, you have no recollection of taking part in this meeting that fixed the salaries for Renton Ice and Ice Cream?

A. Maybe somebody else can be sure about it, and if they say I was there, I would not deny it.

Q. No, I am just getting your idea.

A. I can't tell you, offhand. [3061]

Q. So that you didn't know whether the salaries were fixed at five hundred dollars or what they were fixed at?

A. I actually can't tell you just how they started out.

Q. You were interested in what salaries were paid there, weren't you?

A. That is right, and, after I got the monthly statement—I was interested definitely, because I was a stockholder. After I got the monthly statement, I certainly knew what they was getting.

Q. Now, I believe that on Mr. Moriarty's examination, you testified that you had no knowledge of any arrangement for you to receive part of Baskett and Schneider's salary until you received a check?

A. That is right. It was worked out by Mr. Taylor, and he told Mr. Schneider what the division

(Testimony of Hans Forster.)

was and how he handled it on the books, I don't know if he put it up against labor for me, or dividend, or how he handled it. I wouldn't know. He never tells me what he did, and I never asked him.

Q. You recollect Mr. Schneider's testimony that at this meeting of December 30, 1942, the salaries were fixed at five hundred dollars a month for himself and for Mr. Baskett? [3062]

A. I don't know if he testified to that. I was here, but over the last nine weeks, there has been so many things going through, that if he said four hundred dollars or five hundred dollars, I couldn't tell you.

Q. Well, you recollect the questions in which he was asked whether or not at that meeting there was anything said to Mr. Baskett and to himself that they weren't going to get these full salaries that were voted, and he said there was nothing said to them. Do you recall that testimony?

A. Well, sir, you mark everything down so that you can remember it. I just can't. It is impossible. I remember a few of the things, but I just can't—I couldn't—if I wasn't at the meeting, I couldn't remember and say that twelve years ago somebody said "You are not going to get that salary."

Q. I am just trying to get at what you remember.

A. That is all right.

Q. Do you know of any reason why Mr. Baskett and Mr. Schneider would have accepted and taken

(Testimony of Hans Forster.)

less than the salary voted to them, if you had not resisted on it?

A. If I had not resisted on it?

Q. Yes. [3063]

A. I don't know what I could have done, if I insisted on more or less, because I was a minority stockholder, and, if they didn't want to do certain things, they certainly could overrule me, so far as I know.

Q. Well, there were three stockholders, weren't there? A. That is right.

Q. Mr. Baskett and Mr. Schneider were two of them? A. That is right.

Q. Now, the only person who would be interested in their holding down their salary was you, isn't that right?

A. Well, I—if you put it that way, I suppose I would be the one interested to hold the salary down, except I don't think Mr. Baskett and Mr. Schneider had anything more to do with that situation than I did. Hicks Taylor handled it all, and he is the one that told him what to do.

Q. Mr. Taylor had no stock in this?

A. No, but he certainly run the situation.

Q. As a matter of fact, you loaned Mr. Baskett the money to put into Renton Ice, didn't you?

A. That is right. I think I loaned Mr. [3064] Schneider some, too.

Q. You loaned Mr. Schneider—Mr. Schneider first borrowed his money from a bank, as I recall it?

A. I don't know what brought it about, but I

(Testimony of Hans Forster.)

am sure he wouldn't come to me, if he figured he didn't need some help.

Q. And then later you loaned some money to Mr. Schneider for his interest?

A. I don't know what brought it about.

Q. Well, practically all of the money in this business was your money, wasn't it?

A. Well, it was a very short time they paid it off. I think after they made arrangements to try to make the loans elsewhere. It was just, as far as I was concerned, it was an emergency deal to try to help them out.

Q. But it is your testimony that the—that Mr. Baskett and Mr. Schneider gave up part of the salary voted to them because Taylor ordered them to do it without any direction from you?

A. There was no directions from me at any time to Taylor or to Baskett or Schneider that they should give up part of the salary,—I don't know why they would.

Q. You don't recollect anything that happened [3065] at this meeting of September 30, 1942?

A. No, I told you I am not too positive that even I was at the meeting.

Q. You wouldn't deny that there was such a meeting, and that you were present?

A. I was on quite a few meetings, but I don't know if I was at that particular meeting or not.

If the other people was there, and they could tell me that I was there, I certainly wouldn't deny it.

(Testimony of Hans Forster.)

Q. Well, perhaps I can refresh your recollection by asking you if you don't remember at that meeting when you asked Mr. Taylor if this type of salary arrangement was all right, he said it was all right, provided you report all you got out of it and suggested you put the money into the Alpine Dairy account, so that it would be reported?

A. You know that is a joke. It actually is. That is impossible. He never said such a thing.

He never even told me about the arrangements when we had any meetings. I didn't know anything about the division he made up until I got the check, and I asked Schneider about it, and he said "That is the way Taylor made it out."

Q. Then, you do remember that that was not said [3066] at the meeting? A. What?

Q. Just what I asked you.

A. You told me it was, and I told you it was a joke. I don't know of any conversation at any time that that came up.

Q. Mr. Forster, I am not asking you if it was a joke. I am asking you to tell us whether it is true or not true.

A. Well, it is not true.

Q. All right; you testified, I believe, that you visited Renton Ice two or three times a month, and in addition, had many telephone calls?

A. That is right. Maybe sometimes four times, and maybe only once or twice. I don't keep any notebooks to try to mark any dates down, and where I am going, and how many telephone calls I have.

(Testimony of Hans Forster.)

It is impossible over a period of ten or twelve years to try and remember those things.

Q. Was Mr. Schneider incorrect when he said you were at Renton Ice only a few times a year?

Mr. Griffin: I object to the form of that question.

Mr. Le Sourd: I will withdraw it. [3067]

Q. (By Mr. LeSourd continuing): Do you recall Mr. Schneider's testimony that you came to Renton Ice only a few times a year?

A. No, I don't recall it. I would say it was much more than that. In fact, for a while, I had to sign some checks,—either Mr. Taylor signed checks or I did—and if he went over the weekend up to Lake McDonald, he would go by and sign it, and sometimes I came back from the Alpine Dairy on the way to Issaquah and I would sign it, so that I am sure I was there more than a couple of times a year.

Q. Turning to Finstad and Utgard, Mr. Forster, when you contracted with Egeness and his associates, giving you a right to buy their interest in the contract of Mary Finstad, did you desire that Egeness remain as general manager of that business?

A. I asked him to, yes.

Q. What did you do to induce him to stay?

A. I made him the proposition of three hundred dollars a month, and ten percent of the profits and he accepted it.

Q. Did you insist that he cut his salary?

A. I didn't insist for him to cut his salary, no. He wouldn't have stayed if I—that is the reason

(Testimony of Hans Forster.)

I based it on the profits. I figured he would look [3068] after things a little bit more, and he probably run the Conway show more than—actually alone more than anybody else, than any one of the businesses I was interested in.

I mean, actually, I never went up there more than probably once a month, and sometimes twice, and maybe not that much. I had some telephone calls with him, but he actually run the show.

Q. Do you recollect his testimony here that his salary, before you came in, was \$450 a month?

A. Well, he maybe testified to that, if that—it didn't have anything to do with my arrangement. He was satisfied with it, and from the way the situation looked to him, I suppose he felt the more money he would make, the more salary he would get, and he was perfectly happy with the deal.

Q. And also before you entered into the contract, he was buying one-fourth interest in the business, wasn't he?

A. He had one-fourth interest in it, yes.

I didn't have no contract with him as far as—that was just a verbal arrangement with him, as far as salary and percentage of profit was concerned. There was no contract.

Q. Before you came into the picture, if and when [3069] he paid out Mrs. Finstad, he had one-fourth interest in the property, didn't he?

A. Yes, that is right.

Q. So, your testimony is that he was satisfied to take three hundred dollars a month, instead of

(Testimony of Hans Forster.)

four hundred and fifty dollars a month, and a ten-percent interest in the profits?

A. That is correct, but you have to finish up the deal there, Mr. LeSourd. Between those four fellows that were in there, they only paid Mrs. Finstad—paid what I understood one thousand dollars apiece—down, and I think the total purchase price was \$25,000.

I went in there and paid up the contract of Mrs. Finstad, from what I recall now was close to twenty thousand dollars, and I paid the four fellows forty thousand dollars on top of it in that period.

That is the reason they sold. They wouldn't sell on any other basis.

Mr. Egeness, out of his one thousand dollars investment, got ten thousand dollars out of it.

Q. Mr. Egeness and his associates had paid off a good part of that contract out of their salary?

A. I wouldn't know, but you can check it. I can't give you the exact figure. [3070]

Q. You just gave us the exact figure of one thousand dollars. Are you sure that is all they paid?

A. That is all they told me, down payment of one thousand dollars, and there was a very substantial profit in it to them, and when I bought it, that is what—

Q. (Interposing) Didn't they tell you they paid a lot more than one thousand dollars?

A. No. As far as I know, I think the down payment was one thousand dollars apiece, because I knew Mr. Grant quite a long time, and I knew Mr.

(Testimony of Hans Forster.)

Cook. I met Verne Egeness before, and that is the reason he switched, and Egeness was perfectly happy about the deal, and he still is.

Q. Didn't you get a written statement showing how much had been paid by them on the Finstad contract? A. I think Taylor got it.

Q. Did you?

A. Well, if I got it, he got the papers, Taylor did.

Q. Well, you got it, didn't you?

A. Well, I wouldn't know. You must know what the balance is. We can check it up in the books. I am not trying to—— [3071]

Q. (Interposing) Mr. Forster, do you mean to say you went into this deal without knowing what the balance was you had to pay on the contract?

A. That is right, but I can't remember exactly what the balance was.

Q. You mean, "That is right," you went into the deal without knowing about it?

A. No, I went into the deal with exactly knowing the balance, because Taylor went over the books and he told me what the balance was to Mrs. Finstad, and I knew that the purchase price to buy out those three stockholders was forty thousand dollars, besides taking over the contract of Mrs. Finstad, if the balance was twenty-five thousand dollars, or whatever the deal was.

I am sure the figures must be some place that can be substantiated. I can't remember the figures back for ten years.

(Testimony of Hans Forster.)

Q. Now, you said that you paid off the balance of the contract with Mrs. Finstad. Is that what you just testified?

A. That is what I understood; it was paid through Finstad and Utgard.

Q. How did you pay off the balance to Mrs. Finstad? [3072]

A. Because I owned Finstad and Utgard, and the payments was made from Finstad and Utgard to Mrs. Finstad.

Q. The stock was in Mrs. Finstad's name, wasn't it, all during the period?

A. It was in Mrs. Finstad's name, and was in escrow when the other fellows bought it, and in escrow until it was paid off.

Q. You knew, during all these years, how the payments were being made?

A. I knew the payments came from Finstad and Utgard, yes.

Q. You were, as a matter of fact, at a meeting with Mr. Egeness and Mr. Taylor when it was arranged that Mr. Egeness was to be paid a six hundred dollar salary rather than a three-hundred dollar salary, weren't you? A. No.

Q. Do you recall Mr. Egeness's testimony here?

A. I remember him testifying here, yes.

Q. Do you recollect that he testified you were at that meeting?

A. I recollect of me being up there. I never had any discussion of how it is going to be han-

(Testimony of Hans Forster.)

dled. It was up to Taylor to handle it on the books. How [3073] they handled it, I don't know.

Q. You were not interested in how the payments were to be made, or whether they were to be made to Mrs. Finstad?

A. I was interested in if they was to be made out of Finstad and Utgard, and that was Taylor's suggestion, and he didn't say they should come out of Alpine Dairy or Issaquah Creamery Company, or any other place than Finstad and Utgard and he made the arrangements.

Q. Now, the fact is, isn't it, Mr. Forster, that at that meeting, as additional consideration to Mr. Egeness, remaining as general manager, you agreed that after he finished making the payments to Mrs. Egeness that he was going to get—to Mrs. Finstad,—excuse me,—that he was going to get an interest in the stock of the corporation?

A. After who paid it?

Q. After Mr. Egeness finished paying Mrs. Finstad out of the salary?

A. No. I don't know where you get those facts. The fact is, I bought the stock from Mrs. Finstad and the stock was paid to her out of Finstad and Utgard. I had an arrangement with Verne Egeness to work for three hundred dollars a month and ten percent [3074] of the profits. Over the first few years, he never said anything about buying stock. In the last few years, when things was going pretty good, he said, "After getting through paying Mrs. Finstad, how about buying stock?" And I said,

(Testimony of Hans Forster.)

"I will talk it over with Taylor going home." And I did, and he said, "Better wait until it is paid off. As far as you are concerned, you are better off having no stockholders than yourself."

I mentioned to Egeness we should wait, and he said, "I really like to go ahead and buy interest in it." And at that time, I said, "If we can make arrangement to buy an interest in it, I promise you you don't have to pay any more for the stock that you buy off of me than I originally paid when I came in. That is the basis, if you can make the arrangement."

And that is the conversation we had, and I am sure you can ask Mr. Egeness on any other time. That is the arrangement we had.

This is all new stuff you are bringing up, Mr. LeSourd. Those things are the fact.

Q. Well, now, when was this finally paid off, and you got the stock?

A. I didn't get the stock until, oh, I think it must [3075] have been the latter part of 1950.

Q. It was after the investigation in this case started, wasn't it?

A. That is right, yes.

Q. And at that time, you did have an arrangement with Mr. Egeness where he was going to get a part of this stock, didn't you?

A. He wasn't going to get part of this stock, no. I told him that if things straightened itself out, that I would be glad to sell him part of the stock.

In the first place, he got ten thousand dollars for his one-fourth.

(Testimony of Hans Forster.)

Q. You don't know how much he paid for that before you bought the stock from him?

A. I haven't got the slightest idea, but he was very well satisfied. He didn't have to sell, unless he wanted to. And, all during those years, he has been very satisfied with the arrangements. I think the fellow ought to know if he bought stock or didn't buy stock. I think I would know, if I paid for stock and somebody said, "The stock is not yours."

Q. Now, prior to 1950, you employed Mr. George Kachlein on this Finstad and Utgard matter, didn't you? A. Prior to 1950? [3076]

Q. Yes, about October or November, 1949?

A. Oh, no; no. I didn't meet Mr. Kachlein until the latter part of March, 1950.

Q. That was the first time you met him?

A. That is right. I never met him before.

Q. Isn't it true that he was working on Finstad and Utgard for you quite sometime prior to that?

A. As I recall it, the first time I met Mr. Kachlein was when I went down there with Mr. Taylor. He talked to—in fact, when Mr. Taylor got into trouble on his own income tax situation, I asked him who his attorney was, and he said, "Mr. Kachlein of Bogle, Bogle and Gates," and as his difficulties came along, from month to month, we had a few conversations about it, and he said, "Well, some of these days, if you have a little bit of work that—attorney work, I want you to meet Mr. Kachlein. I think he probably can do you a lot of good. I

(Testimony of Hans Forster.)

think a lot of him, and I feel that he is one of the best attorneys and I feel that his firm is diversified, that they can do you a lot of good in your business in labor relations work."

So, actually nothing came up until we finished paying for this Finstad and Utgard stock.

Q. And wasn't Mr. Kachlein—— [3077]

A. (Interposing) But that was the latter part of February.

Q. Wasn't Mr. Kachlein representing you in Finstad and Utgard at that time?

A. Mr. Kachlein was representing me in Finstad and Utgard not until after the stock was paid in the latter part of February, or very early part of March, that we finally paid for the stock, but we didn't go down to Mr. Kachlein's office until the latter part of March, and Mr. Taylor and I went down there, and at that time, we told him we had this work coming up of trying to get this stock out of escrow, and for him to look over the minute book and to see if it was handled right, and at that time, we had a conversation about all my different interests, about how much stock I had in Apex Farms, and owning Alpine Dairy, and we went over the whole Hans Forster picture.

Q. He became your general attorney at that time, did he?

A. Well, not necessarily. The first matter that Mr. Kachlein handled was actually just the Finstad and Utgard matter. I didn't have any other diffi-

(Testimony of Hans Forster.)

culties that I had to go to an attorney until this investigation started.

Q. Mr. Kachlein then handled the securing of this [3078] Finstad and Utgard stock from escrow?

A. I would think so. I know he worked with—he talked most of the time with Taylor about it, but we left it up to him, and he got ahold of Mr. Croson, or Hicks Taylor got it for him.

Q. Now, turning to Simonson and Forster, there are in evidence here checks to you totalling twelve hundred dollars in 1948 and twelve hundred dollars in 1949. These are the one hundred dollar a month payments that you mentioned?

A. That is right.

Q. Did you have a conversation with Mr. Taylor or Mr. Simonson at the end of 1948 about the checks?

A. I had a conversation with Mr. Taylor when he told me about it, about Oscar raising his salary.

Q. That was before you received these checks?

A. That is right. I don't know of any conversation I had with Mr. Simonson and Mr. Taylor in 1948 except the original conversation that if he want to cut his salary back, that was perfectly all right with me.

Q. And you don't remember any other conversations about these checks after that time?

A. Not about the checks, no. We had lots of conversations. [3079] I go down to Puyallup about the same time that Taylor goes over the books down there, and came out there for lunch and talk over

(Testimony of Hans Forster.)

the general situation and the Dairy business and I go on my way and Taylor go and finish up.

Q. At the end of each year, Mr. Forster, Mr. Taylor would inquire of you, would he, as to whether you had any income for the tax return other than that coming from the books of these companies or other than coming from the books of Alpine Dairy?

A. Well, we went over the general situation, yes.

Q. He did inquire of you? A. Oh, yes.

Q. And you gave him some figures?

A. Well, on all the figures I had, he knew them. Just reminded him of certain things, and he made some notes on it, and he asked me what interest, and, of course, at the time I could get it off the savings books I gave him that. If I couldn't, I would tell him I would call him in a couple of days, Monday, if I could get to the bank.

Q. What interest did you give him, a lump sum figure, or figures for all your interests?

A. I gave him the figure of interest of the different [3080] savings accounts I have and the amounts that if it wasn't recorded up at the time he wanted it in the savings book, I would probably have to call the bank and ask them.

Q. Did you give him the interest in detail for each separate item, or did you give it to him in one lump sum?

A. Well, I'm positive that I didn't give it to him in one lump sum. I told him the interest in the different banks.

(Testimony of Hans Forster.)

Q. You were receiving lots of interest other than the interest in the banks, weren't you?

A. Well, Mr. Taylor got those interests from the contracts from——

Q. (Interposing) How do you know that he got the interest from the contracts?

A. Well, Mr. Bezeau testified to it. He is the one that got all the interest on Alpine Dairy.

Q. You are talking about Alpine Dairy.

That interest went into the Alpine Dairy receipts and into income, didn't it?

A. I wouldn't know where it went.

Q. I am talking about your other interest from all these personal loans that you made, and other matters. [3081]

A. Well——

Q. (Interposing) You were receiving that interest, weren't you?

A. Well, personal loans I made, if it wasn't that——kept at Alpine, it was kept at the——the bank kept the record of it.

Q. Yes, of course, the bank kept it.

A. Well, they are the ones who made the collection. That is where the interest came from that I gave him.

Q. And you gave him a separate item of interest for each of these contracts?

A. No, I lump the contracts together, and I gave him separate items on the banks.

Q. So, you gave him one lump sum for contracts, or separate amounts for each bank?

A. As far as I know, yes.

(Testimony of Hans Forster.)

Q. And he made notes of it at the time?

A. That is right. He asked me about donations and other things, that I think he probably had to check back on the bonds. I don't know if there was any interest due on it, but he knew I had the bonds, because he checked on that interest, how much it earned, and the interest didn't have to be reported until it was earned. I wouldn't know. I never concealed [3082] nothing from him. He knew about everything I was doing.

Q. What did you give him on dividends? Did you give him any information on dividends?

A. Yes, I think as far as the bank was concerned, the bank dividends—the bank sent me a slip, and I turned the slip over to him.

Q. Did you give him any other information on dividends?

A. Well, I told him to get dividends on the stock that I had, that I owned, from Mr. Jordan. I didn't give it to him, but I think Mr. Jordan mailed it to him.

Q. Do you recall Mr. Jordan testifying that he mailed that report to you?

A. Well, if he mailed it to me, he sent him a copy of it, or I gave Taylor the report. I wouldn't know.

Q. In any event, Mr. Jordan's statement was attached to these returns, and did get into income, didn't it?

A. I wouldn't know if Taylor marked it down.

Q. And your bank dividends got into the return.

(Testimony of Hans Forster.)

What other information did you give to Mr. Taylor on dividends? [3083]

A. I gave him all the information I had. I wouldn't know any other dividends I had.

Q. Besides the interest and the dividends, did you give him any further information on dividends?

A. I told you I gave him all the information I had. I didn't conceal anything from him, or anybody else.

Q. Did you give him information on the interest you were paying out on bank loans, or was that deducted from the lump sum of interest you received?

A. I didn't have anything to do with that part.

Q. I didn't hear you.

A. I didn't have anything to do; the bank loans was all handled through the books.

Q. You borrowed money from Peoples Bank to loan to Arctic Gardens, didn't you? A. Yes.

Q. You were paying interest on that loan?

A. Well, the company did; I didn't have anything to do. I don't know if it was paid through Alpine Dairy. It wasn't paid out of my personal account.

Q. Well, that was a personal borrowing; that wasn't a company borrowing, was it?

A. It was Hans Forster borrowing; it wasn't Issaquah [3084] Creamery borrowing, so probably Alpine Dairy paid it. I don't know who paid the interest.

Q. You don't recall? A. No.

(Testimony of Hans Forster.)

Q. But you were paying interest?

A. Well, I never found anybody yet that loaned me any money without interest.

Q. But you didn't give Mr. Taylor any separate item for the interest you were paying out?

A. I didn't. Maybe Mr. Erickson did. I never paid any interest out of my own personal account at home, if that is what you mean.

Q. So, it had, in order for the bank to get it back, it had to come out of Alpine Dairy or Issaquah Creamery?

A. I don't know. The bank would send the statements to Issaquah, and when the notes were due there, we make out the checks. If it was Hans Forster, it was made out to Alpine Dairy checks, and if it was Issaquah Creamery Company, it was made out Issaquah Creamery Company checks.

Q. Now, do you recall any other information you gave to Mr. Taylor at the end of the year?

A. I don't know what you mean by "any other." I told you I gave him everything I knew, and everything [3085] he asked me, and everything I knew that could be of some benefit for him.

Q. I believe that you testified there was some income you gave him that didn't get on the return?

A. Well, it looks to me since this started there is an awful lot of it that didn't get on the return, but not before this investigation started, but I knew that the returns wasn't correct.

Q. Well, just what information did you give

(Testimony of Hans Forster.)

him at the end of the year that didn't get on the return? A. That didn't get on the return?

Q. Yes.

A. Well, some of the checks that was brought up here.

Q. And you gave him the amounts of those checks so that he could put them on the return?

A. As far as I knew, they was in the books, but the accountants, since they went through there, found out that a lot of those checks didn't go through the books. I don't know anything about the interest part.

Q. It is your testimony that you thought that those were in the books?

A. As far as I knew, I didn't know that [3086] they wasn't recorded.

Q. Well, then, what was the reason that you would give Taylor information on them at the end of the year, if you thought that they were in the books?

A. I didn't give Taylor information on those checks that as far as I knew they was on the books. I gave him information that he wanted, and all the information I have. I didn't know a lot of this stuff wasn't on the books until the middle of 1950, after Touche, Niven, Bailey and Smart went through it.

Q. Mr. Forster, I was asking you what information you gave him at the end of the year, and you mentioned the checks?

A. I didn't say that; oh, no.

(Testimony of Hans Forster.)

That is what you wanted me to say, I think. You have been going around on the deal. I told you I gave Hicks Taylor all the information I have, and all the information he asked me for, and that is all I can tell you.

Mr. Le Sourd: It is recess time.

The Court: Ladies and Gentlemen of the Jury:

We will now take the mid-morning recess. The Court calls your attention to the admonition [3087] given to you on similar occasions, and asks that you heed it on this occasion. You may now be excused.

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, at 11:02 o'clock a.m., a recess was had in the within-entitled and numbered cause until 11:15 o'clock a.m. April 2, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. LeSourd.

Q. (By Mr. LeSourd): Mr. Forster, I want to get this matter definite now.

As to these checks that came into Issaquah and

(Testimony of Hans Forster.)

Alpine which you received from Mr. Erickson, and put into your savings account 198, did you give Mr. Taylor figures on those at the end of the year to put [3088] in the return, or did you expect him to get them off the books?

A. I didn't give him the figures of those checks.

Q. Well, did you expect him to get them off the books? A. I figured they was in the books.

Q. Then, is it your testimony that you assumed that those checks had been entered on the books of these companies despite what Mr. Erickson told you when he gave them to you?

A. He didn't say that. He didn't have any place to put them. I don't know if they didn't keep a record of it or not.

Q. Referring again, Mr. Forster, to Defendants' Exhibit A-62, your signed and sworn-to interview here in this Court House on March 8, 1951, with Mr. Marx and Mr. Eppler, I will ask you if these questions were put to you and you made these answers?

Mr. Griffin: Number, please?

Mr. Le Sourd: 134.

Q. (By Mr. LeSourd continuing): "Question: Will you then explain why you accepted these numerous checks arising from the sale of dairy products by [3089] the corporation and deposited them in your personal savings account rather than insisting that they be deposited in the corporation's bank account?

"Answer: When those individual checks were

(Testimony of Hans Forster.)

brought to me and put in my desk drawer, our office manager, Mr. Erickson, in answer to my question, what the checks were for, told me he did not have any place for them in his bookkeeping system.

“Question: Did he say that he did not know how to deposit it in the corporate bank account?

“Answer: No.”

Mr. Griffin: If the Court please, I object to this form of testimony. It hasn't anything to do with any question asked. No impeaching question was asked.

Mr. Le Sourd: If your Honor please——

Mr. Griffin: (Interposing) Heretofore, I have offered the full exhibit, but I must object to this line of questioning, just excerpts from it. All or nothing, unless it is impeaching.

Mr. Le Sourd: If your Honor please, we [3090] are entitled to show inconsistent statements made by this witness prior to trial, and these statements are certainly inconsistent with his testimony that he did not know—that he believed that these amounts were in the corporate books.

The Court: Well, the question of whether or not they are may be impeaching, I think is probably a question for the Jury.

Now, as to other questions, there may be other portions of that that may be admissible, or that may be read to insure the full substance of the particular subject is covered, but I don't know that that would permit the introduction of the whole.

Up to this point, the Court believes that the ques-

(Testimony of Hans Forster.)

tions now being read by Mr. LeSourd may be such as should be heard by the Jury on the question of impeachment, and you may continue.

Mr. Le Sourd: Thank you, your Honor.

The Court: If there is something further——

Mr. Griffin: (Interposing) That is no way to impeach, if the Court please.

The Court: Are you taking exception to the questions read, or to the form?

Mr. Griffin: Both to the form and to the questions read without applying the Rule of Impeachment. [3091]

The Court: Well, what is the preliminary question here, Mr. Reporter?

(Whereupon, the following was read by the Reporter:)

“Question: Then, is it your testimony that you assumed that those checks had been entered on the books of these companies despite what Mr. Erickson told you when he gave them to you?”

Mr. Le Sourd: There was another question. This is part of a question.

Mr. Griffin: Yes, but what he is reading has to be based on a question he asked.

Mr. Le Sourd: Certainly, what I am reading is inconsistent with the testimony of the witness in answer to the last few questions.

The Court: I take it what I am asked to inquire now is: you must ask him whether he testified to these matters?

Mr. Le Sourd: That is what I am doing. If the

(Testimony of Hans Forster.)

reporter can read my preliminary; it is part of a question I am asking, if he didn't say this at this time before these people.

Mr. Griffin: Which is utterly immaterial. [3092]
We go back to the question he asked for which this becomes inconsistent.

The Court: As I understand now, you are not reading a question. You are stating a question and using this to assist you in putting the question?

Mr. Le Sourd: That is correct, your Honor.

Mr. Griffin: Oh, no; he was reading questions and answers. We have to go back to his original premise to even make this admissible in any such form of procedure, notwithstanding I have offered the whole thing. We do object to endeavoring to impeach by simply making an excerpt, without any basis for the original question. That is fundamental.

The Court: I think the form is probably faulty. You probably should re-state, Mr. LeSourd, the substance of the question you have in mind.

Mr. Le Sourd: Then I will restate a preliminary question to this, your Honor.

Q. (By Mr. LeSourd): Mr. Forster, is the only thing that Mr. Erickson said to you when he gave you these checks that he didn't know—that he had no place to put them?

A. That is all he told me, yes.

Q. And that is the entire statement that he made to you about it? [3093]

A. Well, it wasn't just like you said it was—

(Testimony of Hans Forster.)

numerous checks—it was numerous conversations about it. The check came in that he figured he didn't have a place to put, and he put it on my desk or in my desk drawer when I wasn't there.

Q. Did he ever tell you he had no place to put it in his bookkeeping system?

A. I suppose that is what he meant when he said he had no place to put them.

Q. He said he had no place to put them in his bookkeeping system?

A. That is what I said in the testimony you read.

Q. Did Mr. Erickson say that to you?

A. I remember he said he had no place to put them, and I suppose I presumed when he said "no place to put it," he meant in his bookkeeping system. I don't know where else it would be. He didn't tell me that he didn't record them, or he didn't tell me he didn't write it down.

Q. Well, Mr. Forster, if Mr. Erickson told you he had no place to put them in his bookkeeping system, how did you assume that they were in the books?

A. I didn't know. I don't know. I wouldn't know. I wouldn't know if they was in, or wasn't in [3094] them. He said he had no place to put them, and put them in my desk, and if I wasn't there, in my drawer. It was the odd sales he had, like casein or some barrels that we sold, some odds and ends. That is all I can tell you.

Q. So, as to these receipts, you didn't give Mr.

(Testimony of Hans Forster.)

Taylor any figures at the end of the year, and you didn't know whether they were in the books?

Mr. Griffin: Objected to as argumentative.

Mr. Le Sourd: Not argumentative at all.

Mr. Griffin: I object. It is argumentative and a compound question.

The Court: I believe it is compound.

Mr. Le Sourd: It is compound, your Honor.

Q. (By Mr. LeSourd continuing): Then, as to these receipts, you have previously testified that you did not give the figures to Mr. Taylor at the end of the year, is that right?

A. You are bunching everything together in one lump. On a lot of these receipts, I told Taylor about it. I mentioned it.

Q. You mentioned it?

A. That is right. That is all I can tell you. You said "all those receipts"; there is a lot of those [3095] receipts Taylor knew something about. He knew something about the cash receipts. I didn't know if they was recorded or not, but he knew they was going into my savings accounts, those ice cream slips during that period. He knew about casein and about the checks from Apex Farms. I talked to him about it, and he said not to worry; and you are trying to lump them together, and I can't lump it together. I am trying to tell you what Taylor knew and didn't know.

Q. Mr. Forster, didn't you, a few minutes ago, tell us you did not give Taylor the figures on these receipts at the end of the year?

(Testimony of Hans Forster.)

A. I told Taylor about it when the instances happened.

Q. Now, I am asking you if you didn't so testify a few minutes ago?

A. I didn't lump them together at the end of the year. How could I? I didn't keep track of it myself. I don't know if the office kept track of it or not. I never asked anybody.

Q. You say you first employed Mr. Kachlein at the end of February or the first of March?

Mr. Griffin: End of March.

Q. (By Mr. LeSourd continuing): End of March, or when; or when [3096] was it you first employed Mr. Kachlein?

A. It was the end of March, 1950.

Q. The end of March, 1950. Just what did he do for you between that time and the end of April, 1950?

A. Well, Mr. Taylor took me down there to him, just like I said, on the end of March, and that is the time we told Mr. Kachlein about getting—paying for the Finstad and Utgard stock, and we wanted him to go ahead and take a look at the corporation and try to put the stock in its right shape, and get the minutes up to date, and when we talked about the Finstad and Utgard matter, we talked about all of my different enterprises, and that probably took about—after we got through there, we probably spent one hour, or an hour and a half, Mr. Taylor and I and Mr. Kachlein together, and he went ahead and either got ahold of Mr. Croson

(Testimony of Hans Forster.)

or Mr. Taylor got ahold of Mr. Croson—I don't know how it happened, and they worked the deal out.

So far as I remember, I maybe talked to him once in between it, or after that part, after the latter part of March or the first part of April when we started to work on the Federal Milk Marketing Order. I was Chairman of the Puget Sound Handlers' [3097] Committee, and we had the Federal Milk Marketing Order that the producers called in this building here, in the Federal Court; we had the hearing from an Examiner from Washington, D.C., from the Department of Agriculture, and Mr. McFarland, who was attorney for the Foundation in Washington, D.C., was retained by me as Chairman of the Federal Milk Marketing, or rather, for the Puget Sound Handlers' Committee.

So, when Mr. McFarland came out here, he said if we could give him any assistance from some attorneys from different firms in town—and he didn't know too much about the situation here—he knew something about the Federal Milk Marketing Order, but not about the exact difficulties we had in this market.

So, we met, and the Carnation Company brought their attorney up from Los Angeles, and I think Bob Palmer's company represented Arden Farms, and I talked to Mr. Kachlein and he said it would be a matter that probably Bob Graham could help me on, and so I talked to Bob Graham, and I told

(Testimony of Hans Forster.)

him represent my company at that time in the Federal Milk Marketing area.

Q. When was this you talked to Mr. Kachlein about the Milk Marketing Order? [3098]

A. I think it was probably either in the first part of April or middle of April.

Q. And did you talk to Mr. Kachlein any more before talking to him about this investigation?

A. I talked to him about it when I got the call from——

Q. (Interposing) Prior to that time, had you had any other dealings with Mr. Kachlein other than what you have told?

A. I don't think so. I don't know if I had any other conversations, but I remember specifically the thing with Bob Graham, and of course, after that when Mr. Marx called me.

Q. Now, Mr. Marx called you, I think that was about April 21st, wasn't it?

A. I would think so; something like that, yes. I thought it was a little bit earlier than that, but Mr. Marx made note of it, so I suppose that was it.

Q. After his call, when did you talk to Mr. Kachlein about it?

A. After I talked to Mr. Taylor.

Q. Well, when was it you talked to Mr. Kachlein about it?

A. Well, between probably a couple of [3099] days later—if the date of the 21st was correct that Mr. Marx called me, and I called Mr. Taylor and

(Testimony of Hans Forster.)

he told me to tell them to jump in the lake, or go to hell, so I said——

Q. (Interposing) There was a conference on April 26th, I believe, that has been testified to with Mr. Marx? A. That is right.

Q. Between the time Mr. Marx called you and that April 26th conference, how many times did you talk to Mr. Kachlein about this matter?

A. I probably talked to him a couple of times on it. I know I talked to him once after I talked to Taylor, and Hicks Taylor said he was going to be sentenced within a couple of days from that time, and when I talked to Mr. Marx, I mentioned it to him, and he said, "I don't think Taylor would want to work with me, because I am the fellow that got him—investigated him, and you know that he is going to be sentenced."

So, I told him I was just at a loss, I didn't have any accountant, and "I couldn't tell you." As far as I knew, Taylor told me once before we was checked clear to 1946 and he said, "Well, I don't want to just go into 1946; I want to take a look at all your books." And I said, "I am at a loss. I can't tell [3100] you at the present time," and he said, "That is all right."

And I told him that—when I told him I was going to talk to Taylor, that is the answer he gave me, and I said, "I had better talk to my attorney about it," so between—from that time on, I probably talked to Mr. Kachlein a couple of times.

(Testimony of Hans Forster.)

Q. Was that at Mr. Kachlein's office, or by telephone?

A. I think it was mostly by telephone. I don't think I was in Mr. Kachlein's office until the 26th. I think I talked to him about it, and Mr. Marx said, when I told him I didn't have any accountant—I don't know if he said I should get one or not, but anyway, when I talked to Mr. Kachlein, he said he would talk it over with Mr. Taylor there in Tacoma when he was being sentenced; so he thought about it, and after he came back, he said he would talk it over with Mr. Taylor and Hicks told him—they talked about two or three different firms that we should have, and he said Mr. Taylor recommended Mr. Tremper's office as being one of the best and that is why that meeting on the 26th, and I got ahold of Mr. Tremper and he brought Mr. Alkire along, and I guess Mr. Kachlein got ahold of Mr. Marx, and he was in the [3101] office.

Q. Had you, before the meeting on April 26th, at Mr. Kachlein's office, told Mr. Kachlein that there might be errors in your return?

A. No. I wouldn't know if there was any. In fact, we never talked about it.

Q. Had you, before that meeting on April 26th, told Mr. Kachlein that Mr. Taylor had done sloppy accounting work on your books?

A. I always considered Mr. Taylor one of the best accountants in this State. I wouldn't know if it was sloppy accounting work. I couldn't tell you it was good, until I got in this trouble. Now I know

(Testimony of Hans Forster.)

the difference, of course, but I never told him about any sloppy accounting by anybody.

Q. Do you recall Mr. Marx's testimony here that on April 26th, at Mr. Kachlein's office, before you arrived, Mr. Kachlein told Mr. Marx that if there were any errors in your returns, it was due to Taylor's sloppy accounting?

A. Well, just—I heard him testify to that, but I wasn't at the meeting, so I wouldn't know what the conversation was.

Q. Well, this statement, then, was Mr. Kachlein's own idea, so far as you know? [3102]

A. Well, if he made it, I didn't tell him about it. I wouldn't have known. I figured, until the accountants actually got into it—even after April 26th, it was quite a bit later when all this stuff came to light that they brought out.

Q. Yes; well, now, did Mr. Kachlein thereafter suggest to you that your best defense was to attempt to blame everything on Mr. Taylor?

A. He never said such a thing.

Q. By August 29th, you were asserting to the Agents that any errors were Taylor's fault?

A. Well, by August 29th, we certainly found a lot of stuff that looked like he made a mess out of it.

Q. Then, was this defense of blaming this on to Taylor your idea, or suggested by your attorney?

A. It wasn't anybody's at that time, suggestion, either by Mr. Kachlein or the accountants or myself, to blame it on to Mr. Taylor at that time.

(Testimony of Hans Forster.)

Q. Was it your idea?

A. No, of course, not. I don't know how I could blame anybody. I think the record shows by itself what kind of a mess he made out of it.

Mr. Le Sourd: That is all.

The Court: Mr. Keesling? [3103]

Cross Examination

Q. (By Mr. Keesling): Mr. Forster, there are, I believe, about eight different enterprises in the Forster enterprises that we have talked about here?

A. I would think so; either own them all or part of them, yes.

Q. And each of those enterprises has its own clerical staff, does it not?

A. That is right.

Q. At Apex Farms, it was Mr. Keck?

A. That is right, yes.

Q. And up at Finstad and Utgard, it was, at one time at least, Mrs. Simonson? A. Yes.

Q. And then at Simonson and Forster, that is at Puyallup, I believe one of those you testified to here was a Mrs. Buchanan?

A. They changed girls. They only had one girl in the office.

Q. Arctic Gardens, which later became Alpine—I believe Mr. Taylor did work for that?

A. That is right.

Q. And did he do the work for Hub City Drug?

A. I don't know. I think he made the monthly statements [3104] for Hub City Drug.

(Testimony of Hans Forster.)

Q. Did Hub City Drug have a separate clerical staff? A. Yes.

Q. Renton Ice and Ice Cream had Mr. Schneider, and was there a girl there in the office?

A. Yes, Mrs. Richards.

Q. Now, at Issaquah, there was an office of approximately four people, an office force, including Mr. Erickson, and sometimes you would have more?

A. Oh, maybe during the flush periods in the summer months an extra girl for two or three months.

Q. Then, as I understand it, at Alpine Dairy they had the largest clerical staff of all; there were some thirty persons there?

A. Yes; that is, Alpine Ice Cream was in the same office, too.

Q. Now, is it correct that Alpine Dairy with its thirty persons would be the largest clerical staff of all?

A. Well, I would say that they probably had more than all the rest of them put together.

Q. And the next in line would be Issaquah with its four or five?

A. No, I think next in line would be Apex.

Q. Next in line would be Apex?

A. Oh, yes.

Q. Well, what would the next in line be?

A. I would say Issaquah, then.

Q. And then would the remainder be—there would be exceptions—where there was one girl, or maybe two persons? A. That is right.

(Testimony of Hans Forster.)

Q. Now, Mr. Moriarty made a remark that clerical difficulties came up at Issaquah.

Is it true that at least in some instances where the other particular offices, clerical staff didn't know what to do with an item, they would forward it to Issaquah?

A. Well, I would think that was especially true with Alpine Dairy.

Q. Of course, Time Oil receipts, they just sent them all up to Issaquah? A. That is right.

Q. And Mr. Erickson was in charge of the clerical work at Issaquah?

A. That is right; in charge of the office.

Q. Now, Mr. Erickson—incidentally, before we leave Apex Farms, is it correct that on the Equalization checks, Mr. Erickson got the figures from Consolidated [3106] as to the amount of milk shipped, and then he passed those figures on to Mr. Keck, who did the work of working out the Equalization checks?

A. Yes, I think Mr. Erickson—I know that is where he got the sales.

Q. In other words, the base figures?

A. From the base he got from Consolidated, because that is where the bases came from.

Q. Mr. Erickson was not a stockholder in any of your enterprises, was he?

A. No, he wasn't.

Q. And he was not an officer in any of the enterprises? A. No, he wasn't.

(Testimony of Hans Forster.)

Q. And he did not share in any of the profits, did he? A. No, he didn't.

Q. He was a salaried employee?

A. That is right. He didn't participate in any losses, either.

Q. He didn't share in profits or losses. He was an employee on a salary. Now, Mr. LeSourd has asked you, was he working for you? Actually, is it not true that he was an employee of Issaquah Creamery, the corporation? [3107]

A. That is right.

Q. He was not employed——

A. (Interposing) His only pay came from——

Q. (Interposing) He was on that payroll?

A. He was on that payroll, yes.

Q. And he was not an employee of Alpine Dairy? A. No.

Q. And he was not an employee of you personally? And he was not an employee of any of the other various enterprises? A. That is right.

Q. In the sense of using the language that he worked for you, it could be said he worked for you in that you owned all of the stock in Issaquah Creamery Company, the corporation; you were the president?

A. He worked for me just like the other three hundred people did that worked for me.

Q. I didn't get the last.

A. I said, in the same sense as the other three hundred people that worked for me, on my payroll.

Q. He wasn't taken into any of your confidences

(Testimony of Hans Forster.)

as to how you run the business? He may have furnished you figures in any month, the same as any other department heads of production or sales; he didn't enter into any of the decisions on the policy level, that is, [3108] the over-all policy of how to run your business? A. No.

Mr. Keesling: I have no further questions.

The Court: Mr. Moriarty, do you wish to cover the matter covered by the other defendants?

Mr. Moriarty: I think Mr. Griffin should conclude.

Mr. Griffin: I think your other cross should come next.

Mr. Moriarty: Very well.

Cross Examination

Q. (By Mr. Moriarty): Mr. Forster, you discussed with Mr. Jones and Mr. Donaldson and Mr. Strack in connection with the separation of the Alpine from the Issaquah Creamery Company?

A. Well, I mentioned that I was called into the conference with Mr. Jones. I don't know if it was once or twice, but I can recall at least once, to come and sign some papers. That is all. Mr. Strack or Mr. Donaldson wasn't at that conference. It was just Mr. Taylor and Mr. Jones.

Q. Wasn't the principal purpose of meeting with Mr. Jones to discuss the tax situation and the savings that could result from this separation?

A. I didn't have anything to do with that end.

Q. Well, did I misunderstand you in connection

(Testimony of Hans Forster.)

with your testimony that Mr. Taylor had discussed the question of taxes, and that he had suggested Mr. Jones as a party knowing something about those tax problems?

A. Well, but that wasn't—I know he retained Mr. Jones to talk over tax problems, but as far as I know, that didn't have anything to do with the separation of the deal.

Q. Well, what did Mr. Jones advise about or what did Mr. Taylor tell you Mr. Jones was advising about?

A. Well, at the time I came in there, the papers were made up, and as far as I know, I signed the papers the way—on the separation that they made, Alpine from Issaquah. Why they proposed it, what I understood, they tried to make two separate businesses out of it, in case I would want to get rid of the manufacturing part, or the fresh milk part. It would be easier to sell either one than all together, but I wasn't in any conference when the tax problem was discussed, if there was any discussion about it.

Q. I am not talking about the time you signed the papers. I am talking about the time that Mr. Taylor [3110] and you discussed the necessity of—or discussed the matter with Mr. Jones on the tax matter, as I recall your testimony.

Mr. Griffin: Just a moment. I object to the form of that question. He didn't testify he ever had any conversation with Mr. Jones on tax matters.

(Testimony of Hans Forster.)

Mr. Moriarty: I think you misunderstand my question, Mr. Griffin.

Q. (By Mr. Moriarty continuing): What discussion did Mr. Taylor have with you about Mr. Jones being called in in connection with tax matters? A. Well, Mr. Taylor told me——

Q. (Interposing) That is what I want.

A. (Continuing) ——when we retained Mr. Jones, that he wanted to discuss tax matters with Mr. Jones, but he didn't say it had anything to do with the separation of Alpine Dairy.

Q. Wasn't that the paper you signed in Mr. Jones' office, the separation of Alpine from Issaquah?

A. Oh, yes; but they had other things to talk about.

Q. Well, what did you talk about?

A. Well, we talked about the separation of Alpine from Issaquah Creamery, but the tax problem, so [3111] far as I was concerned, never came up in the discussion I had.

Q. Were you thinking about selling Issaquah in 1940?

A. We didn't know that if we maybe want to sell Alpine Dairy.

Q. Answer my question, Mr. Forster. Were you thinking about selling Issaquah in 1940?

A. Well, I suppose, if we could have got enough money, I would have sold either one.

Q. Were you then thinking of selling Issaquah in 1940? A. Well, we talked about it.

(Testimony of Hans Forster.)

Q. All right; then what was the purpose of taking Alpine out of Issaquah? It was to save taxes?

A. Not as far as I knew.

Q. You were not interested in what it cost you in taxes? A. Interested in what?

Q. What taxes cost you?

A. Of course, I was interested in what taxes cost me, just like anybody else.

Q. Now, when you talked with Mr. Taylor——

A. (Interposing) Yes.

Q. (Continuing) ——about the separation, if my memory [3112] serves me correctly, he said that Mr. Jones was familiar with tax problems in this separation?

A. That wasn't the same conversation. You are pushing both of them together.

Q. Well, let's get the one that had taxes.

A. All right. The conversation that Mr. Taylor and I had was before 1940. I can't tell you exactly. You asked me——somebody asked me the question before about attorneys, and I told you that we had engaged Jones and Bronson, Mr. Jones, and I told you why—that Mr. Taylor said that they was tax experts, and sometimes he needed some advice, and some guidance on it, and that is the reason he wants to hire them. I don't know. The record should show when we hired Mr. Jones. I am sure it was quite a bit before 1940. And it didn't have nothing to do with the separation of Alpine Dairy from Issaquah Creamery Company.

Q. Was that the service Mr. Jones performed

(Testimony of Hans Forster.)

for you the day you went down and signed the papers?

A. They do a lot of other things. I don't know what the talk was with Mr. Taylor; in fact, I think we had him on a retainer, pay him so much a month.

Q. Then you had an attorney from 1940, Mr. Jones of Jones and Bronson?

A. I did what? [3113]

Q. You had an attorney during all these times on retainer?

A. I think Mr. Taylor conferred with him, yes. I think he had Grill, who is in the same office.

Q. That is the firm, isn't it?

A. That is right.

Q. And you had them from 1940?

A. Well, I can't tell you. The records should show.

Q. Well, I am asking you now for your recollection.

A. I can't recollect it. I know it was before 1940 that we employed him.

Q. Can you add anything further to any conversations that Mr. Taylor had with you about Mr. Jones and tax matters? A. No.

Q. You didn't inquire anything further other than Mr. Jones was a tax expert?

A. Well, he said that Mr. Jones was handling the matter——

Q. (Interposing) Of taxes?

A. (Continuing) ——in making the separation.

(Testimony of Hans Forster.)

That probably was maybe a couple of years before that the separation came along. It didn't have nothing to [3114] do with it as far as I knew. It didn't have nothing to do with it.

Q. Wasn't it about this time that the corporate taxes began to rise, or do you recollect anything about that?

A. I don't even know what the corporate taxes are today, or what they was a year ago, or in 1940 or 1930. I heard more about it the last two months than I have for the last twenty years.

Q. Did you read the daily newspapers during this period? A. To which?

Q. During the period of 1940 to 1950?

A. Well, as much as I had time. Probably read the sports section.

Q. Did you read in those papers anything about the increase in individual taxes and corporation income taxes?

A. I wouldn't know. If you can recall fourteen years ago what happened, I wouldn't know.

Q. Did you read just a few days ago about the tax bill being passed and the excise taxes being reduced?

Mr. Griffin: Objected to as immaterial.

The Court: Objection sustained. [3115]

Q. (By Mr. Moriarty): Do you recall, in 1945, or '46 or '47 or '48, ever reading about the debates in the Congress about the taxes?

Mr. Griffin: Just a moment, if the Court please. That assumes something not in evidence.

(Testimony of Hans Forster.)

Mr. Moriarty: It is inquiring.

Mr. Griffin: Well, it assumes. It is not proper cross. I object. It is not proper recross examination, and assumes something not in evidence. It assumes a fact not in existence.

Mr. Moriarty: I am testing the answer that the party has given me as to Mr. Jones in tax matters.

Mr. Griffin: I doubt that anybody in this courtroom could testify honestly that they read about debates in the Congress.

Mr. Moriarty: Then I will ask this question:

Q. (By Mr. Moriarty continuing): During this period of time, Mr. Forster, from 1945 to 1949, in your reading, did you or did you not read that taxes on income and corporations were going up?

A. I don't know if I read about it or not, but as far as I was concerned, it never bothered me, or never entered my head, because Taylor handled all my [3116] tax matters, and as far as I was concerned, he didn't tell me if we paid thirty-five percent, forty-five percent, or fifty-five, no matter what the percentage was.

Q. I thought you had to pay the bill?

A. That is right.

Q. It didn't make any difference?

A. Whatever I had to pay, I had to pay, and if he told me what it was, that was it, period.

Q. Now, we will pass that subject.

Why did you object so much in 1949 about the income, if it didn't make any difference to you about what taxes you paid?

(Testimony of Hans Forster.)

A. I didn't tell you it didn't make any difference to me. I told you that I wanted to pay the right share of taxes, and in 1949, when the amount with the same amount of sales was three times as much as the previous year, I told him, "You better go and try to refigure it." If he came back with the same figure, it wouldn't make any difference, whatever the thing would have been.

Q. Mr. Forster, I am handing you Plaintiff's Exhibit 13, which is the income tax of Issaquah Creamery Company for 1948, and I will ask you to read the gross sales of that year, as it appears on that return. [3117]

A. \$2,515,731.64.

Q. And now, I will ask you to read what appears on page 14, which is the return for the year 1949 of the Issaquah Creamery Company.

A. \$2,359,544.27.

Q. So, your gross sales were considerably lower in 1940——

A. (Interposing) ——nine.

Q. (Continuing) Then they were in 1948?

A. That is—well, I would say one hundred fifty thousand dollars out of two and one-half million.

Q. And your cost of sales remained approximately the same, or were they lower?

A. Cost of sales were two thousand dollars lower.

Q. In what year? A. In 1949.

Q. So that your comparison of 1948 and 1949 weren't reflected in the income tax returns?

A. You say they weren't reflected?

(Testimony of Hans Forster.)

Q. Yes.

A. I think they definitely are.

Q. Did I understand that in 1949 when you were discussing the matter with Mr. Taylor that you objected to it because it was 'way out of line with 1948; or am [3118] I mistaken?

A. It was as far as the profits was concerned. I didn't say anything about the sales out of line. In fact, I think the sales was close.

I think on two and one-half million dollars sales the difference of one hundred fifty thousand dollars—I don't think is such a big percentage.

Q. You don't?

A. Well, it is around five or six percent.

Q. Did I understand you correctly, when you were discussing it with Mr. Taylor, in this famous gathering——

A. (Interposing) I don't know what was famous about it.

Mr. Griffin: Object to the form.

Mr. Moriarty: I will withdraw it.

Q. (By Mr. Moriarty continuing): In this meeting in early 1950, when all of the papers were there, you were comparing the 1948 with 1949 and objecting because they were out of line with it?

Mr. Griffin: Object to the form of the question. No one said all of the papers were there. [3119]

Q. (By Mr. Moriarty continuing): Well, then, that the totals were known to you and the totals that Mr. Taylor was presenting to you were at a variance; am I correct in that statement?

(Testimony of Hans Forster.)

A. Well, repeat it. I don't know.

Q. Or do you recall that?

The Court: Do you want the——

A. I will recall if you put the question so that I can answer it.

Q. (By Mr. Moriarty): All right; in 1950,—I recall your testimony here—after the returns for 1949 were in, Erickson and Taylor and you had a meeting, and a dispute arose, or a discussion arose, as to the fact that 1949 was 'way out of line; do you recall that?

Mr. Griffin: Just a moment. I object to the form of the question. The witness testified, No. 1, that it was no meeting; No. 2, Erickson was not there.

Mr. Le Sourd: To the contrary, he said this morning Erickson was not there.

Mr. Moriarty: They are eliminating so many I will rephrase the question to suit everybody.

Q. (By Mr. Moriarty continuing): Was there a meeting in 1949 with Taylor about the income in 1949? [3120]

A. Well, I told you he came out there to go over the books and talk over——

Q. (Interposing) What was the date of that meeting?

A. I can't tell you the date of that meeting.

Q. Was there a meeting at which some dispute arose between yourself and Mr. Taylor and anyone else that was present?

A. It wasn't a dispute. I just told him to go and take a look at the figures again, because the way it

(Testimony of Hans Forster.)

looked to me, the figures were out of line with the sales.

Q. A discussion?

A. (Continuing) And the profits were out of line with the sales, and for him to try to take a look at the figures.

Q. Why did you decide the figures were out of line?

A. Well, I think I have mentioned it to Mr. Le Sourd, and I can——

Q. (Interposing) Mention it again.

A. (Continuing) ——mention it again.

In the month of November, I think we showed a loss of around nine thousand dollars, or some place around there, and Mr. Taylor told me that it probably [3121] showed a profit between twenty-two and twenty-five thousand dollars in the month of December. I just can't exactly give you the right amount.

Q. Will you fix the date of that conversation?

A. I can't fix the date.

Q. Was it in December, 1949, or January, 1950?

A. It was in January, 1950.

Q. All right; who was present besides Mr. Taylor and yourself?

A. The discussion we had, it was discussion between Taylor and I.

Q. Had Erickson been in the meeting at any time?

A. It wasn't a meeting. The offices were one-third of this courtroom, or one-fourth of it, and he sat in the other office, and I sat in the one and

(Testimony of Hans Forster.)

Taylor brought the figures in and we went over it in the afternoon.

Q. Was Erickson in the office during this discussion?

A. He wasn't in my office. The discussion was—as far as I remember, between Taylor and myself.

Q. All right, who had given you the information about the nine thousand dollars? [3122]

A. Taylor did.

Q. When did Taylor give you this information?

A. He sent me my statement out in the month of November.

Q. You had the statement with you then?

A. No, but he had it in the books. He kept—he had his working sheets along for the previous months and he had the ledger along, where he had his sales. I don't know anything about the books, but he had information about sales for the previous year.

Q. I understand that Taylor at that time insisted that this was the profit and you insisted it wasn't?

Mr. Griffin: No.

A. That is what Mr Le Sourd said, yes.

Mr. Griffin: Just a moment. I object to the form of the question. I can't help what counsel understands. That is clearly outside of the evidence. There was no such testimony in this case of insisting. We spent one hour on it before. The entire testimony was that he suggested to Taylor that something was wrong.

(Testimony of Hans Forster.)

Mr. Moriarty: I concede counsel's statement that it isn't in the record.

Mr. Griffin: You don't mean "concede". [3123]

Mr. Moriarty: I withdraw "concede".

(Whereupon, Mr. Moriarty and Mr. Griffin laughed.)

The Court: You may proceed.

Mr. Moriarty: I think I can pursue this. Any further objection to make as to who was present, and what was said?

The Court: What was the question you wish to put? Will the reporter——

Mr. Moriarty: (Interposing) Before Mr. Griffin interrupted me, I had asked a question. I would like the Court Reporter to read it.

The Court: Mr. Reporter, read the question.

(Whereupon, the following was read by the reporter:

"Question: I understand that Taylor at that time insisted this was the profit, and you insisted it wasn't?")

A. There wasn't any insisting on either part. We just compared the figures from the year before.

Q. (By Mr. Moriarty): From 1948?

A. From 1948, and I don't think he could understand at that time, either, why we should lose ten thousand dollars in November and make twenty-five thousand dollars in December. There was no quarrel about it. I told him to try to check the figures over again. [3124]

It couldn't be possible that after we run a cer-

(Testimony of Hans Forster.)

tain percentage for a certain length of time, that the percentage would go three times as high in one year over the other. That is all there was to it. There was no quarrel, or no meeting.

Q. Well, am I mistaken that the 1949 shows more than 1948 in sales?

A. I told you it was about \$150,000 more sales. That is around twelve thousand dollars a month.

Q. And that meant more profit, didn't it?

A. Not necessarily. Sometimes you can go ahead and sell the other way.

Q. You can sell what?

A. Sometimes your sales increase and you make less money than with lower sales.

The percentage in between there, 105 percent difference—around five or six percent—is not going to vary it so that your profits go up six percent or drop six percent. It is impossible.

Q. I understood, if I understood you correctly, that you knew in your head the general cost of the operation, the fixed costs, and that you could tell from the volume of sales about what the profit would be; am I mistaken? [3125]

A. If circumstances were the same, if you had the same kind of labor cost, and the same kind of milk cost, and selling cost, over the month period, it just couldn't change. You could tell it on the statement. It was just like a thermometer.

Q. And that is the way it worked for you through the years?

(Testimony of Hans Forster.)

A. Well, I would say 75 percent of my figuring was done in my head, or eighty percent of it.

Q. And it had proven pretty accurate?

A. Well, I seemed to get along until somebody decided it wasn't right.

Q. I think we are in agreement.

Now, as I understand from another part of your testimony, that you asked Taylor about a profit and loss statement for the Daisy Ice Cream Company and he didn't give it to you?

A. Well, he just kept on promising it to me and he said he tried to get it out next time, but he didn't.

Q. Wasn't the Daisy Ice Cream Company a part of the Alpine Dairy operation?

A. That's right; except it was—the Ice Cream part and the Milk Division and the Ice Cream Division.

Q. But, all of those Dairy proceeds went into [3126] the Alpine account, didn't it?

A. I don't know how they handled it. I can't tell you.

Q. Why did you ask him for a profit and loss statement?

A. I wanted the statement of the separate purchases and the labor cost of the Ice Cream part, and I wanted a statement of the purchases of the Ice Cream Mix, and different material, and rental, just a rough figure to see if we was getting along all right, or getting behind, or going ahead.

Q. I understand that you told Mr. Riig, when

(Testimony of Hans Forster.)

he asked you if they were in the red or black, you said you were in the black?

A. I did probably after examining a statement that Mr. Erickson threw together.

Q. Mr. Erickson made that statement?

A. Well, Taylor held back for two or three months—I don't know for how long, and I finally said, "Maybe Harold can work up a rough draft when you are too busy." When you talk about a statement, sometimes he tries to take the cost of the cheese as a separate item in making cottage cheese, of a profit and loss statement. They can't take the whole company. Sometimes you take butter production, and take the [3127] amount paid for fat, and the amount for labor, and the amount for butter. That is what I wanted. I wanted to see how that separate part was getting along.

Q. Mr. Erickson made up this profit and loss statement?

A. It wasn't a profit and loss. It was a rough draft of the different costs of the material and labor, and what we got for the stuff.

Q. Now, Mr. Erickson also made up for you a profit and loss statement during this period?

Mr. Keesling: I object as repetitious.

Mr. Moriarty: No, I have only heard about Mr. Taylor until now.

Mr. Keesling: I mean, right now he has asked it three times.

The Court: You may proceed.

(Testimony of Hans Forster.)

Mr. Keesling: I didn't hear the question then, your Honor.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

Q. (By Mr. Moriarty continuing): During these periods, would be better. That is the question. During these [3128] periods?

The Court: You are referring now to the Daisy Ice Cream operation?

Mr. Moriarty: I am now speaking generally about the Issaquah Creamery Company, because, up until now, as I understand the testimony, Mr. Taylor made those up.

Mr. Keesling: I have no objection if he is going into another phase.

Mr. Moriarty: Yes.

A. Well, you can't even call it a profit and loss statement, but in order to give me some kind of an inside so I could tell if we was going ahead or going behind, I asked Taylor if he could try to see he could get those figures together. He never refused, but he kept on putting me off, and finally, I said, "We can't keep on running unless I know what we are doing, because this thing is expanding, and we are going to have to buy extra cabinets, and I like to know if we are going ahead or going backwards", and he never refused, except he said he was awfully busy, but he said he would do it next time, and after he told me he would do it next time, more than for two or three months, I said, "Why don't

(Testimony of Hans Forster.)

you tell Harold Erickson how to do it? And I showed it to Hicks Taylor then, [3129] just what Harold Erickson made out, but that was the only statement.

Q. (By Mr. Moriarty): About Daisy?

A. At any time that Harold Erickson made out. It was on a piece of paper.

Q. How did you know that Harold Erickson didn't know how to make out a profit and loss statement?

A. Because Taylor made them out all the time, and I wanted to be sure he would talk to Harold about it. I never got a profit and loss statement from Harold Erickson before. I still don't know why Taylor didn't, except he said he was too busy.

Q. Will you tell the Jury then what Mr. Erickson did at the end of each month during 1945 through 1949, just in connection with the operations of the Issaquah Creamery Company?

A. The end of each month?

Q. Yes.

A. At the end of each month, he would figure out his milk and pay the producer, and at the end of each month he would figure out the labor cost and make up the figures for Taylor. That is all I know.

Q. And would he give you a sheet of some kind?

A. No, he never gave me a sheet.

Q. What would he do when he had done all that, come in and talk to you?

A. Well, no, he didn't talk to me about it. The

(Testimony of Hans Forster.)

figures he made up, he gave to Taylor, as far as the cost of milk.

Q. Did it ever pass to you before it went to Taylor?

A. No, it never passed to me. I never had anything to do.

Mr. Moriarty: It is recess time.

That is all with Mr. Taylor, for the moment.

The Court: Forster.

Mr. Moriarty: —Forster. You were so closely identified.

The Court: Ladies and Gentlemen of the Jury, we will now take the noon recess. The Court calls your attention to the admonition given you on similar occasions, and asks that you heed it on this occasion. You will now be excused until 1:45.

(Whereupon, the Jury retired from the courtroom.)

The Court: This case on trial may be recessed until 1:45. The Court will remain in session.

(Whereupon, at 12:17 o'clock p.m. a recess was [3131] had in the within-entitled and numbered cause until 1:45 o'clock p.m. April 2, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

(Testimony of Hans Forster.)

It is stipulated that the Jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Moriarty.

Q. (By Mr. Moriarty): Mr. Forster, on your cross-examination by Mr. LeSourd, in connection with the Time Oil Company cash payments, I understand that your testimony was that you talked to Mr. Taylor and that he told you not to worry about it. Is that a correct statement of your testimony? A. Yes.

Q. What were you worrying about?

A. I told him that it was a cash payment, and going into my savings account.

Q. What were you worried about? [3132]

A. Well, that is what I told him.

Q. Was it about taxes, or the payment?

A. Taxes never occurred to me. Mr. Taylor knew the amount of money I was collecting.

Q. Well, if the record shows that in 1945, including the Time Oil payments, you received approximately twenty-one thousand dollars in cash that went into 198, did you make those deposits?

A. Did I make the deposits?

Q. Yes.

A. I would think I made most of them; maybe all of them.

Q. And that would be an average of about one hundred dollars each banking day, would it not?

(Testimony of Hans Forster.)

Mr. Griffin: I object to that as not recross examination. Gone into.

The Court: You are covering matters covered by Mr. LeSourd?

Mr. Moriarty: I think so, in regard to the currency.

The Court: About the deposits?

Mr. Moriarty: About the currency that went into 198.

Mr. Griffin: The Government examined in full in regard to it. [3133]

Mr. Moriarty: That is not my understanding of it. Mr. LeSourd, I think, covered it on his cross.

Mr. Griffin: My only objection is that it is not recross and repetitious.

The Court: I grant it was covered, but wasn't it covered—shouldn't it have been covered on your original cross?

If you wish permission to reopen, the Court will grant it.

Mr. Moriarty: I ask permission.

The Court: You may.

Mr. Moriarty: To reopen?

The Court: You may.

Q. (By Mr. Moriarty): Will you answer the question?

The Witness: Will you read the question?

The Court: Mr. Reporter, read the question.

(Whereupon, the preceding question was read by the reporter.)

(Testimony of Hans Forster.)

Q. (By Mr. Moriarty continuing): —during the year?

A. Well, are you talking about Time Oil Company cash?

Q. I am talking about Time Oil Company and other currency besides Time Oil Company. [3134]

A. I wouldn't know if it would figure out that much or not. I don't know how it figured.

Q. They were substantial sums, weren't they?

A. That is right. My farm rent was in cash.

Q. Yes.

A. There was some other items that was in cash.

Q. And if, in 1945, twenty-five thousand went into that account, you handled those funds also?

A. I would think so. I don't think anybody deposited anything in my savings account.

Q. Without your direction?

A. Well, I don't know if anybody—maybe somebody else deposited my own checks, my own payroll checks, my salary checks.

Q. And you wrapped up the coins yourself?

A. I never wrapped up any coins.

Q. You just put them in a bag?

Mr. Griffin: Objected to as immaterial, if the Court please.

Mr. Moriarty: No.

The Court: Objection sustained.

Q. (By Mr. Moriarty continuing): Now, how did you report these deposits to Mr. Taylor, that you made from day to day?

Mr. Griffin: Just a moment, if the Court [3135]

(Testimony of Hans Forster.)

please. I object to the form of that question. There is no evidence he made deposits from day to day, and the point was gone into in detail in chief and cross-examination.

Mr. Moriarty: I am going into the question that was developed by Mr. LeSourd that Mr. Forster kept slips, and that on his way to Conway, he discussed what was on these slips that he had in his pocket and told Mr. Taylor about it.

The Court: If you wish to reopen your cross-examination, redirect not having been entered upon, the Court will consider that. I think there is some limitation, Mr. Moriarty, but on that theory, if you wish to examine, the Court will permit it.

Mr. Moriarty: Thank you, your Honor.

Mr. Griffin: I have no objection to going into that document that Mr. LeSourd examined on.

Mr. Moriarty: No, I am examining on his general testimony about the slips that he kept in his pocket that he discussed with Mr. Taylor on his way to Conway, at various times, and I want to develop further how he kept those slips and what he did with those slips and whether he kept a record.

Q. (By Mr. Moriarty): Now, do you understand, Mr. Forster?

A. Well, you restate the question. [3136]

Q. All right; you kept little slips that you put in your pocket when you made these deposits, did you? A. No.

(Testimony of Hans Forster.)

Q. Well, how did you report to Mr. Taylor the currency deposits?

A. I told him the approximate amount of the Time Oil Company cash receipts, and I gave him the approximate amount of the cash I received from the farm.

Q. You say "approximate"; what do you mean by "approximate"?

A. Well, I told him that is what it amounted to by month. That is, the farm rent was set, whatever it was, and he paid cash for quite awhile. I don't know when he started to pay by check.

Q. Who are you talking about now?

A. Mr. Alpress.

Q. Mr. Alpress; I am talking about Mr. Taylor and your reports to him, and the approximate amounts.

A. That is all I gave him.

Q. Were they round figures?

A. That is right.

Q. So that you weren't reporting to Mr. Taylor exactly what you received? [3137]

A. I told him the approximate amount. That is what it amounted to per month between these receipts from Time Oil Company and cash from Mr. Alpress on the farm rent.

Q. And what about the other currency than Time Oil?

A. That is what I got through telling you, Time Oil.

Q. What? I didn't hear your answer.

(Testimony of Hans Forster.)

A. I got through telling you I told him about Time Oil.

Q. Now, handing you Exhibit 170, and calling your attention to testimony in response to Mr. Le Sourd's questions on cross-examination that you didn't receive Time Oil monthly, I will ask you to examine Exhibit 170 and point out any month during those periods that you didn't receive those payments each month?

A. I don't have to examine it in order to tell you sometimes the whole two or three months are together.

Q. Some of them were for Alpine, and some of them were Issaquah? A. That is right.

Q. Did you tell him the amount you got for Issaquah? [3138]

A. I just gave him the total amount.

Q. You just gave him the total amount?

A. That is right.

Q. Did he make any memorandum?

A. He knew the amount that I was getting. Yes, he made a memorandum of it.

Q. You mean while you rode along in the car?

A. On a monthly basis. I didn't go over the slips at the end of the year. I told him that was the amount that I was getting on a monthly basis on those cash receipts.

Q. Now, you made the statement under cross examination that the Government claimed two and one-half million dollars in taxes?

(Testimony of Hans Forster.)

A. Well, that is a statement Mr. Marx mentioned, yes.

Q. Just a moment. Did you get that from any books? A. I got it from Mr. Marx.

Q. You got it from Mr. Marx?

A. It was in a meeting when that was what he mentioned.

Q. And was that confirmed by your accountant?

A. That was his figure. I haven't got any figure from the accountants on it. [3139]

Q. Have you asked for them?

A. Have I asked for them?

Q. Have you asked for them?

A. Well, I think we did ask for them, but what I understand, they can't get the figures out until they get together with the Government. You asked me questions out of my——

Q. (Interposing) You said something about liquidating your properties. How much did you get for the liquidation of your properties?

A. Just what do you mean?

Q. You talked about the sale to Consolidated?

A. That is right.

Q. How much did you get?

A. We sold for \$2,600,000.

Q. And that was exclusive of the inventory?

A. That is right.

Q. And the total aggregate amount that you received, will you tell the Jury?

A. The total what?

(Testimony of Hans Forster.)

Q. The total of the inventory and the \$2,600,000 that you received?

Mr. Griffin: Just a moment. I object to the form of that question. He hasn't received it.

Mr. Moriarty: Well, contracted for it. [3140]

Mr. Griffin: And held by the Government.

Mr. Moriarty: I don't think that is part of my question.

Q. (By Mr. Moriarty continuing): How much have you contracted to receive for your properties in all? A. I told you.

Q. Including inventory and the two million six hundred thousand?

A. I don't know. We sold it for \$2,600,000.

Q. And inventory?

A. Plus the inventory.

Q. And what was the amount of the inventory?

A. I couldn't tell you unless I saw the figures.

Q. Was it one million dollars?

A. Oh, no.

Q. Was it five hundred thousand dollars?

A. I couldn't tell you, unless I seen the figures. I don't think we carried one half million dollars of inventory.

Q. You were then represented by your firm of accountants, Touche, Niven, Bailey and Smart?

A. It was what?

Q. You were then represented by your firm of accountants when you made that sale? [3141]

Mr. Griffin: Just a moment, if the Court please. I will object as not the best evidence. The Govern-

(Testimony of Hans Forster.)

ment has these documents in escrow, and we would like to see them.

Mr. Moriarty: I haven't them.

Mr. Griffin: I said "the Government".

Mr. Moriarty: I happen to be representing the Government at this moment.

The Court: Are you objecting to the question?

Mr. Griffin: Yes, your Honor.

Q. (By Mr. Moriarty): You didn't sell the Renton Ice Cream Company in that transaction?

A. No, because I didn't own it.

Q. You still retain the Renton Ice Cream Company?

A. No, it sold out. I mean, it is liquidated.

Q. That was in addition to your sale to Consolidated? A. That is right.

Q. You still have your job with the Issaquah Creamery Company, or the Consolidated Dairy, do you not?

A. Well, right now I am jobless; I haven't got [3142] a job.

Q. Up until the day that this trial started, you were the general manager of the company that you sold to the Consolidated, were you not?

A. That is correct, but now I am unemployed.

Q. You are now on leave, aren't you?

A. I wouldn't know. I haven't contracted to go back to work yet. I don't know when I am going to get through here.

Q. Are you drawing unemployment compensation at this time?

(Testimony of Hans Forster.)

A. I will probably have to by the time you get through with me, yes.

Q. But you are not drawing it right now, is that correct? A. No, I don't.

Mr. Griffin: Did he answer? Was there an answer to that question?

The Witness: I told him I wasn't.

Mr. Griffin: Thank you.

Q. (By Mr. Moriarty): Now, as I understand it, Mr. Forster, Mr. Kachlein represented you in the close of the Finstad and Utgard deal?

A. Mr. Kachlein represented me after Mrs. [3143] Finstad was paid.

Q. Well, but he advised you about the two payments of twenty-five hundred and two thousand dollars that were made on February 28, 1950?

A. I don't think so.

Q. Well, did you consult with him about it?

A. I didn't consult with Mr. Kachlein until the latter part of March.

Q. You didn't consult with Mr. Kachlein until the latter part of March?

A. That is right. Mr. Taylor wrote those checks out.

Q. And did you consult with Mr. Taylor about those? A. Yes.

Q. Will you tell me then why the two checks for two thousand and twenty-five hundred dollars were written on February 28, 1950, which was the close of the deal?

A. Why they were written?

(Testimony of Hans Forster.)

Q. Yes.

A. In order to pay Mrs. Finstad off.

Q. And that was the balance?

A. I would think so. I am sure we wouldn't pay her any more than we owed her. [3144]

Q. And that wasn't charged to Mr. Egeness' salary, was it?

A. I wouldn't know how Mr. Taylor handled it on the books.

Mr. Moriarty: I think that is all.

The Court: Do you have something?

Mr. LeSourd: I have some questions.

The Court: On the examination of Mr. Moriarty?

Mr. LeSourd: On Mr. Moriarty's examination, yes, your Honor.

Cross Examination

Q. (By Mr. LeSourd): These two checks to Mrs. Finstad in 1950, are you sure those were written by Mr. Taylor?

A. I am quite sure it is his handwriting, yes.

Q. You are familiar with his handwriting?

A. Well, I have seen it over the last twenty years, yes.

Q. And it is your settled opinion that that is his handwriting?

A. I don't know what the word is before "opinion", but it is my opinion that it is his handwriting, yes.

Q. He didn't normally write checks at Finstad [3145] and Utgard, did he?

(Testimony of Hans Forster.)

A. He wrote his own paycheck up there once in a while.

Q. I asked you if he normally wrote checks for Finstad and Utgard?

A. Well, I have seen him write checks for his own pay up there. That is all I know.

Q. I still ask you if he normally wrote checks for Finstad and Utgard?

A. Well, "normally," is that once or twice, or most of the time? He wasn't the bookkeeper up there, no.

Q. Other than once or twice writing his own paycheck, you have no knowledge of any checks he did write?

A. No, I have no knowledge, except I know he wrote some of his own paychecks.

Q. He didn't sign checks up there?

A. No, he didn't sign those two either, but I think it is his handwriting.

Q. You think the name of the payee is in his handwriting?

A. The name of the payee, I think, is in his handwriting, yes. [3146]

Q. Are you certain that Mr. Kachlein didn't advise you as to those two checks?

A. I am quite positive he didn't enter into the picture until we paid Mrs. Finstad off, and that is the time we went to see Mr. Kachlein, to get the escrow agreement from—with the escrow from Mr. Croson, attorney for Mrs. Finstad.

Q. In regard to the Time Oil receipts, you say

(Testimony of Hans Forster.)

that you gave Mr. Taylor the figure every month?

A. No.

Q. Did you give——

A. (Interposing) I told him about the original arrangement, and then afterwards I told him what it approximately amounted to per month.

Q. You gave him a single figure average per month, is that what you gave him?

A. No, I didn't. Just an approximate figure, what it amounted to per month.

Q. Do you recall what figure you gave him?

A. No, I don't recall. I do recall of talking the original proposition over with him, and afterwards telling him the amount it was, and I think he asked me about it—about the approximate amount, what it amounted to per month, approximately.

Q. And so you gave him figures, so many dollars? [3147]

A. That is the way he asked me at the end of the year on those things. In other words, he said, "If you haven't got it, just approximately how much was it?" And, unless I had the actual figures right there, I would give him the approximate figure.

Q. And so you gave him an approximate figure of so much money for Time Oil?

A. That is right.

Q. Per month? A. Per month, yes.

Q. And you did that at the end of every year?

Mr. Griffin: If the Court please, I am going to

(Testimony of Hans Forster.)

object as not recross, but recross upon recross examination. Each counsel went into it.

The Court: I will sustain the objection.

Mr. LeSourd: If your Honor please, Mr. Moriarty went into this thing, and this witness testified——

The Court (Interposing): Well, I suppose you can go back and forth for days on this.

Mr. LeSourd: Yes. I would like to put one more question on this matter.

The Court: You may put one question if you wish.

Q. (By Mr. LeSourd): As a matter of fact, your receipts from Time Oil varied quite considerably every month, didn't they?

A. They didn't vary very much until the rate was changed, and then when the rate was changed from one and one-half cent to two cents, I spoke to Mr. Taylor about that, too, and the rest of the time it didn't vary too much because we run the same amount of vehicles and we used the gallonage. It wasn't off too much from one month to another. It might vary some.

Mr. LeSourd: That is all.

Mr. Keesling: No questions.

Redirect Examination

Q. (By Mr. Griffin): Mr. Forster, you recall that Mr. Moriarty in examining you spent considerable time upon your conversation with Mr. Taylor

(Testimony of Hans Forster.)

as to the meeting with him in January of 1950 dealing with the year 1949 as compared to 1948?

A. Yes.

Q. And you were examined by Mr. LeSourd in detail upon that matter? A. Yes.

Q. And do you recall that either one counsel or the other produced one of Mr. Taylor's work sheets, I believe it was, or some document in which he [3149] showed a loss for November, for 1949, of between nine and ten thousand dollars?

A. That is right.

Q. I understand your testimony was at the January meeting where he was giving you the rough figures, he said you made a profit of twenty-five or thirty thousand dollars in December, 1949?

A. He said that is the way it looked to him, yes.

Q. And the year 1949 looked like 110, or 16, thousand dollars, or something like that; in excess of one hundred thousand dollars? A. Yes.

Q. And you suggested to him that he recheck his figures, because it didn't correspond with 1948?

A. That is right.

Q. And you have testified that November and December are generally losing months——

A. (Interposing): And so is——

Q. (Continuing): ——in your business?

A. (Continuing): ——January and February, too; those four months.

Q. And you made a comparison without having the figures before you that the sales were about the same for the two years? [3150]

(Testimony of Hans Forster.)

A. Well, Mr. Taylor had the figures on sales.

Q. I mean in your testimony, before Mr. Moriarty produced exhibits 13 and 14, you only had an approximation of what the sales had been?

A. That is right.

Q. Now, as it turns out, if you will take my computation as to figures, when you complained to Mr. Taylor that he was showing around a six percent profit for the year as compared with 1948, showing you Exhibit 13, the sales for 1948—that is, gross sales—were \$2,515,731.64?

A. That is right.

Q. That is, at least, what Mr. Taylor shows on the income tax return; is that right?

A. 1948, yes.

Q. In 1949, they are \$2,359,544.27?

A. That is right.

Q. In other words, when you were asking Mr. Taylor to recheck his figures, the gross sales for 1949 were \$156,187.37 less than they were in 1948?

A. That is right.

Q. And he was still claiming or asserting to you that it looked like over one hundred thousand dollars, so that your profit would jump from about 2 percent to 6 percent? [3151]

Mr. Moriarty: These questions are somewhat leading, if your Honor please.

The Court: If you are objecting, the Court will sustain the objection.

Q. (By Mr. Griffin continuing): And your costs, you say, comparatively the same, comparatively?

